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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1930

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GROUP NO. 1 OIL CORPORATION, *Petitioner,*

v.

JAMES W. BASS, COLLECTOR OF INTERNAL REVENUE FOR THE UNITED STATES FOR THE FIRST DISTRICT OF TEXAS, *Respondent*

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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## BRIEF FOR PETITIONER

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—BY—

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT**

## BRIEF FOR PETITIONER

### Opinions Below.

The opinion of the United States District Court for the Western District of Texas (R. 27) is reported in 38 Fed (2nd) 680. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 47) is reported in 41 Fed. (2nd) 483.

The references herein to the Record are to the pages of the re-printed record and not of the original.

### Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on June 18, 1930. (R. 49.) Motion for rehear-

ing was filed on July 7, 1930 (R. 50), which was considered and denied on August 1, 1930. (R. 50.) Petition for writ of certiorari was filed September 6, 1930. The writ was at first denied on October 20, 1930, but, on a petition for rehearing, was granted on November 24, 1930. (R. 51.) Jurisdiction is conferred upon this Court by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

**Brief Statement of Question Involved.**

Petitioner is the holder of oil and gas leases granted by the State of Texas on part of that State's public domain, and brought this suit to recover Federal income taxes it had paid on income derived solely from its operation of its State leases. This Court in a series of cases arising from Oklahoma has held that the holders of oil and gas leases, granted by the United States upon Indian lands, are agencies and instrumentalities of the United States government, and the State of Oklahoma may not levy any taxes, including an income tax, upon such lessees. Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292; Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522; Howard v. Gipsy Oil Company, 247 U. S. 503; Large Oil Company v. Howard, 248 U. S. 549 (reversing the decision of the Supreme Court of Oklahoma in Large Oil Company v. Howard, 63 Okla. 143); Gillespie v. Oklahoma, 257 U. S. 501; and Jaybird Mining Company v. Weir, 271 U. S. 609. In the Gillespie case this Court held invalid an income tax levied by Oklahoma upon the net income of such a Federal lessee. This Court in The Collector v. Day, 78 U. S. (11 Wall.), 113, 127; United States v. Railroad

Company, 84 U. S. (17 Wall.) 322, 327-8; Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 584; and in Ambrosini v. United States, 187 U. S. 1, 7, and many other cases, has held that instrumentalities of the States are exempt from Federal taxation to the same extent and for the same reasons that similar Federal instrumentalities are exempt from State taxation.

The United States District Court for the Western District of Texas held petitioner's income was exempt, and rendered judgment in its favor for $736,796.25, the amount of the taxes sued for. The Circuit Court of Appeals reversed the judgment on the ground that by Section 27 of the act under which petitioner's leases were granted, which provided that "rights acquired under this Act shall be subject to taxation as is other property," the State had waived this exemption.

Petitioner contends that its income from its State leases is exempt from these income taxes under the Federal Constitution and the treaty between the United States and the Republic of Texas under which the latter became the State of Texas, and that Section 27 referred only to State taxation and the State did not thereby waive its fundamental right to have its instrumentalities free from control on the part of the Federal government through taxation or otherwise.

The State of Texas, through its brief as *amicus curiae* in connection with the petition for a rehearing of the application for a writ of certiorari, has in this case taken the same position as the petitioner, and is now itself denying the right of the Federal government to levy these taxes upon petitioner and other similar lessees of the State.

## Statutes Involved.

The relevant portions of the constitutional and statutory provisions will be found in the Appendix, *infra*, pages 76 to 127.

## Statement.

Petitioner filed its original petition (R. 1) to recover income taxes it had paid under the Revenue Acts of 1924, 1926 and 1928, to respondent for the periods from July 1, 1924, to March 31, 1928, which had been assessed on account of income derived by petitioner from its operation of oil and gas leases granted by the State of Texas on part of that State's public lands. Petitioner asserted its said income was exempt from these Federal income taxes on the following grounds:

The lands covered by the leases have always been a part of the public domain of the State of Texas, and its predecessor governments, the Kingdom of Spain, the Republic of Mexico, the Republic of Texas, and finally the State of Texas. The United States, in the compact between the Republic of Texas and the United States under which the Republic of Texas became the State of Texas (as shown in 5 Stats. 797; 9 Stats. 108; Gammel's Laws of Texas, Vol. 2, pp. 1200, 1225 and 1228), expressly guaranteed that the State of Texas should retain its vacant and unappropriated lands, which included the specific tracts covered by petitioner's leases, and dispose of them as said State might direct. The lands involved have been set aside by the State for the support of the University of Texas, a university established and maintained by the State of Texas. In order for the State to secure the development of its oil and gas and other minerals and convert them into

money for the benefit of the State and its university, the State granted oil and gas leases upon these lands, reserving a royalty equal to one-eighth of the oil and one-tenth of the gas. Petitioner held two such leases (copies of which are set forth at R. 13 and 17). The income taxes paid were assessed on income derived by petitioner solely from the sale of oil and gas produced by it from these State leases and from its operation thereof. Petitioner had other taxable income, but this was more than offset by properly deductible expenses, and none of the taxes paid were assessed because of this outside taxable income. Its claims to exemption may be summarized as follows:

1. The taxes are a burden on the power and right of the State of Texas to develop its own oil and gas resources, and could be used by the Federal Government to destroy that power and right.

2. The taxes are a burden upon the leases and the petitioner as the owner thereof, chosen by the State as means to develop its mineral resources, and could be used to render them impotent as such means and agencies.

3. The taxes are upon the rights and franchises granted by the State.

4. The leases are exempt from Federal taxation, and petitioner's income therefrom is likewise exempt.

5. The taxes prevent the petitioner from producing the maximum amount of oil, and thus reduce the State's returns through its royalties.

6. If these taxes could be levied by the Federal Government on the State's lessees, this would have a sensible influence on the terms the State could require in the leases and the amount of royalties it could reserve.

It alleged the taxes were invalid on each of the foregoing grounds, both under the Constitution of the United States and under the express guarantee of the United States in its compact with the Republic of Texas that the new State of Texas should retain its public lands as its own and dispose of them as it deemed best.

All necessary prerequisites under the revenue laws as to filing claims for refund and their rejection before the suit was filed were alleged, and were admitted by respondent.

The respondent filed a formal answer (R. 20), and an agreed Statement of Facts (R. 21) was filed, which admitted all the allegations of petitioner except those alleging the legal propositions on which petitioner based its claim to exemption. The effect was to narrow the issues to the one question of whether the petitioner was under the facts alleged exempt from the Federal income taxes. We quote the following from the Agreed Statement of Facts:

> "It is the desire of both plaintiff and defendant to eliminate in this cause every issue affecting plaintiff's Federal income taxes for the years involved, except the single question of exemption asserted by plaintiff." (R. 23.)
>
> "The income taxes sued for by plaintiff were assessed against, and paid by, it on its said income derived from the sale of said oil and gas. If plaintiff is entitled to recover any part of the taxes sued for, it is entitled to recover all of them." (R. 23.)

The case was tried before the court on written waiver of a jury. (R. 21.) On February 19, 1930, the court filed its opinion (R. 27), sustaining petitioner's con-

tentions in full, and on February 28, 1930, entered judgment in petitioner's favor for the taxes sued for. (R. 37.)

The Circuit Court of Appeals on June 18, 1930, rendered its opinion (R. 47) and entered its order and judgment (R. 49), reversing the judgment of the District Court. After a motion for rehearing, filed on July 7, 1930 (R. 50), was considered and overruled on August 1, 1930 (R. 50), petitioner filed in this court its application for writ of certiorari on September 6, 1930, and the writ was granted on November 24, 1930. (R. 51.)

**Specification of Errors To Be Urged.**

The assigned errors intended to be urged are fully set forth in the petition for writ of certiorari, and may be summarized as follows:

1. The Circuit Court of Appeals erred in reversing the judgment of the District Court because on the authority of the decision in Gillespie v. Oklahoma, 257 U. S. 501, and the other decisions of this court referred to, petitioner is exempt from the Federal income tax as an instrumentality of the State of Texas.

2. The said court erred in reversing the judgment of the District Court because the taxes involved are a burden upon, impair, and are in derogation of, said State's right, under the Constitution of the United States and the treaty between the United States and the Republic of Texas, to develop its own mineral resources free from interference by the United States, and are an unauthorized burden upon petitioner and its leases, the agencies chosen by the State for the purpose of exercising this right.

3. The said court erred in holding that by Section 27 of the 1917 Leasing Act the State of Texas granted its permission to the United States to levy these taxes upon its instrumentality, the petitioner, because said section dealt solely with taxation by said State and its subdivisions, and not with taxes levied by the United States.

4. The said court erred in holding the collection of said taxes was allowed under said Section 27 because said section was repealed on March 10, 1925, before any of said taxes were levied or became due.

5. The court erred in holding, if in fact it did hold, that under the decision of the Supreme Court of Texas in Theisen v. Robison, 117 Tex. 489, petitioner was not an instrumentality of the State, but was merely a purchaser of the minerals, because neither petitioner's leases nor said decision of the Supreme Court of Texas sustain such a holding.

## Summary of Argument.

The exemption of State instrumentalities from Federal taxation, and vice versa, has been read into the Constitution for the protection of the State and Federal governments from encroachments by the one upon the exercise by the other of its sovereign and independent powers. Each government within the sphere of its own reserved or granted powers is supreme. Taxation of the agencies of the one by the other is an interference with that government's exercise of its sovereign functions which it is performing through the designated agency. The individual welfare of the instrumentality, considered as separate and apart from its governmental connection, was not the reason for

the origin of the rule. Therefore, in this case, petitioner is not before this court simply as an individual taxpayer. It is here in its representative capacity as an agency of the State of Texas. Through it the State of Texas is asserting the fundamental proposition that the State has the right to develop its own oil and gas resources under its public domain free from control or hindrance on the part of the Federal government.

The State and its predecessor governments have always owned the lands involved as part of their public domain. In the compact between the United States and the Republic of Texas the former expressly guaranteed that the new State of Texas should retain its public lands as its own. The United States may levy no tax upon the State's lands or interfere in any way with its enjoyment of all its rights as the owner thereof. Van Brocklin v. Tennessee, 117 U. S. 151. As a part of the land the State owns the oil and gas thereunder, and one of its rights as such owner is the right to produce, or have produced for it, this oil and gas. Gillespie v. Oklahoma, 257 U. S. 501. The Federal government may not burden or impede the State in the exercise of its sovereign right to realize upon its own oil and gas resources.

The State may in its unrestricted discretion choose between itself producing the minerals, or having them developed in the usual and customary method through leases. It has chosen the latter method, and this petitioner and other similar lessees are appropriate instrumentalities through which the State exercises this right. The State has granted these leases, not for the private use and profit of the lessee, as in the case of grants to homesteaders where the State retains no connection

with the land, but for the purpose of securing the development of the State's own minerals, and it remains vitally connected with the leases at all times. These lessees fall within that class of instrumentalities that are exempt from taxation by the Federal government. An income tax upon their net income from the leases burdens and impedes the State in developing its minerals and is therefore invalid. Gillespie v. Oklahoma, *supra*.

It is immaterial for what purpose the State uses the revenue derived from its minerals. The tax, if it attaches at all, attaches at the time the minerals are produced and converted into money and before the State makes any use of their proceeds. However, the maintenance of the University of Texas, for which these lands have been set aside, is a governmental activity.

Section 27 of the 1917 Leasing Act, under which petitioner's leases were issued, that "rights acquired under this Act shall be subject to taxation as is other property" referred solely to taxation by the State and its subdivisions, and did not embrace Federal taxes. It was inserted to assure the taxability of these leases if litigation then pending in the State courts should result in oil and gas leases being held not to constitute property subject to taxation as such property was then defined in the general taxing statutes. If Section 27 is construed to include Federal taxes, the State has then waived its sovereign right to have its agencies exempt from Federal control through taxation. As this is a waiver of its sovereign rights, this section must be construed strictly in the State's favor, and when so construed, it clearly is not a waiver by the State of

these rights. Furthermore, it is submitted that Section 27 was repealed on March 10, 1925, before any of the taxes involved herein accrued.

## Argument.

### I.

**The State of Texas may not be hindered or impeded in any manner by the United States in developing its own oil and gas resources on its public domain.**

The lands embraced in petitioner's leases have always been a part of the public domain of the State and its predecessor governments, the Republic of Texas, the Republic of Mexico and the Kingdom of Spain. The Republic of Texas became one of the United States after extended negotiations between the two republics which resulted in a compact between the two nations, evidenced by resolutions of the United States Congress and of the Congress and of the Convention of the Republic of Texas, 5 Stat. 797; 9 Stat. 108; Gammel's Laws of Texas, Vol. 2, pp. 1200, 1225 and 1228. These resolutions are set forth at page 76 of the Appendix to this brief. Texas had a small population and by far the greater part of its territory was still owned by the Republic as the sovereign of the soil, while at the same time its debts and liabilities were large. The disposition of its public lands and liabilities was the subject of extended negotiations. It was proposed that (a) the United States should assume Texas' debts and in return take over its public lands, or (b) Texas would retain both its lands and its liabilities. The latter alternative was finally agreed upon, and the ultimate compact, therefore, included the following spe-

cific guarantee in the resolution of the Congress consenting to the admission of Texas:

> "2. And be it further resolved, that the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: * * *
>
> "*Second.* Said State * * * *shall also retain all the vacant and unappropriated lands lying within its limits,* to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debt and liabilities, *to be disposed of as said State may direct;* but in no event are said debts and liabilities to become a charge upon the Government of the United States."

Thus the State of Texas and the United States have the same relation to their respective public lands. Each holds title as the original sovereign of the soil, and neither may interfere with the other's enjoyment and exercise of all of its rights as such owner. Each government has the sovereign right to retain, own, cultivate and utilize its lands and enjoy all the rights and privileges of ownership in them without interference or hindrance from the other, whether by taxation or otherwise. If one may tax the other's lands or control their use, then that government's ownership is not independent and sovereign but dependent and subject to the will of the other.

The complete independence of each government in regard to its public domain has been illustrated in numerous decisions of this Court. This whole subject was exhaustively reviewed in Van Brocklin v. Tennessee, 117 U. S. 151, in which this Court held that no State may levy any tax upon property of the United States. In that case this Court stated that:

> "Whether the property of the United States shall be taxed under the laws of a State depends upon the will of its owner, the United States, and no State can tax the property of the United States without their consent."

A State may not collect from a subsequent owner taxes for the year during which the land belonged to the United States; Wisconsin Central Railroad Company v. Price, 133 U. S. 496; Irwin v. Wright, 258 U. S. 219, 228; Lee v. Osceola & Little River Road Improvement District, 268 U. S. 643; or tax the property of a corporation owned and controlled by the United States, Clallam County v. United States, 263 U. S. 341. Whether title has passed from the United States depends upon the national and not the State laws. Wilcox v. Jackson, 13 Peters 498, 516-7; Gibson v. Chouteau, 13 Wall. (80 U. S.) 92, 99. Its title may not be divested by possession under State statutes of limitations. Jourdan v. Barrett, 4 Howard (45 U. S.) 169, 185. The United States and the separate States hold their lands in trust for the people for public purposes, but have all the rights of any owner in them. United States v. Insley, 130 U. S. 263, 265; Light v. United States, 220 U. S. 523, 536. The government "has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold them from sale." Camfield v. United States, 167 U. S. 518; United States v. Midwest Oil Company, 236 U. S. 459, 474. The United States may reserve from sale for an indefinite period all its lands in a State and thus deprive the State of revenue

derived from their taxation, but the possibility of such conduct on the part of Congress "is no reason for a misconstruction of the scope and extent of that power." Stearns v. Minnesota, 179 U. S. 223, 243.

The same considerations establish the absolute independence of the State of Texas in regard to its public domain. A different rule would place it completely at the mercy of Federal legislation. Utah Power & Light Company v. United States, 243 U. S. 389, 405.

The oil and gas under the ground are as much a part of the public domain as the surface, and the State's right to produce them, or have them produced, is only one of the rights constituting its composite ownership. Since the United States may not interfere with its enjoyment of its rights as owner of these lands, it may not impede the State in bringing them to the surface.

This Court has specifically held that the production of oil and gas is one of the incidental rights of ownership. The United States holds certain Indian lands in Oklahoma for the benefit of the Indians, and this Court has consistently held that, since the State of Oklahoma may not tax the lands themselves, it may not through taxation or otherwise control or impede the United States in having the minerals produced for the benefit of the Indians. Choctaw, Oklahoma & Gulf Railroad Co. v. Harrison, 235 U. S. 292; Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U. S. 522; Howard v. Gipsy Oil Co., 247 U. S. 503; Large Oil Co. v. Howard, 248 U. S. 549 (reversing 63 Okla. 143); Gillespie v. Oklahoma, 257 U. S. 501; Jaybird Mining Co. v. Weir, 271 U. S. 609.

If the State should establish a separate governmental department and through it directly drill wells upon its

lands and produce the oil and gas, the United States could in no way interfere with the State in this activity. The State could not be required to pay a Federal income tax upon its income or any other tax to the Federal government. Its employes would likewise be exempt.

If the United States may interfere, by taxation or otherwise, with the State's production of its own minerals, then it would necessarily follow that the State could produce them only on such terms as the United States might impose. It would further follow that the United States might, if it chose, levy an income tax upon the income of the State of Texas from its own oil and gas, for, as this Court said in United States v. Railroad Company, 17 Wall. (84 U. S.) 322, 332, in denying the right of the Federal government to require a railroad to deduct a tax of five per cent upon the interest paid the City of Baltimore on bonds of the company owned by the city:

> "We admit the proposition of the counsel, that the revenue must be municipal in its nature to entitle it to the exemption claimed."

Yet this court held the interest paid the city was exempt and municipal in nature as the city had subscribed for the bonds because it "with a view to its commercial prosperity, was desirous of aiding in the construction of a railroad," that would bring trade to the city. If such an activity is municipal in nature, the development by the State of its own sovereign public domain is a sovereign activity, and any attempt by the United States to interfere therewith would be in derogation of the State's sovereign prerogatives.

This freedom of the State from Federal control arises

not only under the United States Constitution but under the express guarantee of the United States in its agreement with the Republic of Texas that the State of Texas "shall also retain all the vacant and unappropriated lands lying within its limits * * * to be disposed of as said State may direct." This guarantee was a part of a compact between the two independent nations. They were negotiating with perfect freedom of action upon the part of both parties, and they could have established a mere understanding for mutual defense, a confederation or any kind of association. They finally agreed that the Republic of Texas should become one of the States under certain specific guarantees, and those conditions are now as binding obligations upon the United States as any other treaty.

Cases like South Carolina v. United States, 199 U. S. 437, are entirely different in every respect. The Constitution allowed the Federal government to levy excise taxes, and it had been collecting such taxes in the form of licenses from all dispensers of liquor. South Carolina took over the entire business of selling liquor in that State, and the question involved was whether the dispensers employed by the State were subject to the Federal license tax, and this Court held they were. The real ground of the decision was the thought or fear that the States, "mingling the thought of profit with the necessity of regulation," might take over the exclusive operation of all kinds of business formerly carried on by private individuals, and thus dry up the sources of Federal taxation. Concerning that case this Court said in Murray v. Wilson Distilling Co., 213 U. S. 151, 173:

"That case was concerned with the power of a

> State, by virtue of its legislation in regard to the sale and consumption of liquor, to destroy a pre-existing right of taxation possessed by the government of the United States."

The State of Texas in having its oil and gas produced has not gone into the oil business. It has not, as a result of "mingling the thought of profit with the necessity of regulation" taken over the operation of the oil business. It has created no State monopoly. It has not purchased these lands with the view of deriving a profit from the production of oil to pay its operating expenses. It is simply producing the oil from lands that were claimed for the Kingdom of Spain by its original discoverers and settlers, and its title thereto is independent and absolute. Shively v. Bowlby, 152 U. S. 1, 50. The first act of an explorer is to claim the new land for his sovereign.

This distinction is clearly pointed out by the recent decision in Sherman et al. v. The United States of America (No. 14, October Term, 1930, decided November 24, 1930), in which this Court held that the California Board of State Harbor Commissioners in operating the State Belt Railroad was not subject to the Federal Safety Appliance Acts. In that case this Court said:

> "California has not gone into the business generally as a common carrier, but simply has constructed the Belt Line as an incident of its control of the harbor—a State prerogative."

In the same way Texas has not gone into the oil business generally, but simply is producing its own oil and gas as an incident of its ownership of its public domain, one of the strongest prerogatives of the State.

No pre-existing source of Federal revenue is affected,

as in the South Carolina case. The United States may levy no taxes on these lands. No one may drill them or produce oil or gas therefrom without the State's consent. Therefore there can be no income from the minerals, whether subject to Federal income taxes or not, until the State acts. Hence it follows a denial of the right of the United States to levy an income tax upon the State or any of its agencies will not destroy any pre-existing right of taxation possessed by the United States.

Nor does this case involve the question of whether other activities of the State, like the examples in the South Carolina case, would be exempt. This case deals solely with the rights of the State in lands it still holds by virtue of its original ownership as sovereign of the soil and not in lands it has purchased for private gain.

It therefore is clear that the United States may not interfere with the State of Texas in its production of this oil and gas, whether through taxation or otherwise.

It is immaterial for what purpose the State uses the proceeds of the oil or gas. United States bonds are exempt from all State taxation, whether by way of ad-valorem taxes on the bonds or income taxes on the interest, regardless of how the holder may use or invest the interest or principal thereof when paid to him. If he invests it in ordinary private property, that property becomes liable for State taxes, but the exemption of the bonds themselves and the interest is not affected thereby. In the same way the State has the right to produce its oil free from Federal control regardless of the purpose for which it may subsequently use its revenues therefrom.

However the State is using its income from these lands for carrying out its public functions as a government. The Texas Constitution of 1776, by Article VII, Sections 10 to 15 (set out at page 84 of the Appendix), commanded the legislature to establish and provide for the maintenance of a university of the first class, styled "The University of Texas," and by Section 15 set aside an additional 1,000,000 acres of the public domain for its endowment, support and maintenance. The leases involved are upon a part of these lands. Thereupon the legislature by the Act of March 30, 1881 (Laws of 1881, Ch. 75, p. 79), created the present University of Texas. It is strictly a State school, supported and maintained by appropriations by the legislature, and governed by a board of regents appointed by the Governor. The present articles of the Revised Statutes of 1925 dealing with its management and control are Articles 2584 to 2606 and 2907, but their details are immaterial.

The University of Texas is not a separate private corporation but is a mere branch of the State government. Phillips v. Virginia University, 97 Va. 472; Hjorth Royalty Co. v. Trustees of University of Wyoming, 30 Wyo. 309. The State continues to own these lands as fully as before they were set aside for the university. Smisson v. State, 71 Tex. 222, 231; Theisen v. Robison, 117 Tex. 489, 503. In York v. Alley, 25 S. W. (2nd) 193, 195 (writ of error refused by Supreme Court of Texas), the court said concerning the university's lands:

> "But in either event it belongs to the State of Texas, whose title is not that of a mere trustee. The State owns the land just as fully as before it was dedicated to public educational purposes.

Theisen v. Robison, 117 Tex. 489, 8 S. W. (2nd) 646; Smisson v. State, 71 Tex. 222, 9 S. W. 112; Greene v. Robison, 109 Tex. 367, 210 S. W. 498."

The maintenance of public schools for the education of the youth and training of future citizens is, and has always been, regarded in the United States as one of the highest and most important governmental functions of a republican form of government. Cochran v. Louisiana State Board of Education, 281 U. S. 370; Phillips v. Virginia University, *supra;* Hjorth Royalty Co. v. Trustees of University of Wyoming, *supra;* Board of Education v. State, 26 Okla. 366, 370; Scown v. Czarnecki, 264 Ill. 305. Public schools and universities have been maintained and operated from the earliest colonial times. They were conducted by the colonies. Nelson's Encyclopedia, Vol. 10, p. 91; The Americana, Vol. 27, History of University of Columbia; Vol. 29, p. 337; Ellwood P. Cubberly, "An Introduction to the Study of Education," pages 1-4, 62-3, 357-8. They were authorized by the early State constitutions and colonial laws. (The following page references are to "The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States," compiled under an order of the United States Senate by Ben. Perley Moore, 1878.) Constitutions of Georgia, 1777, Art. LIV, p. 383; Massachusetts, 1780, Art. III, p. 957, Chap. V, p. 970; New Hampshire, 1784, p. 1291; North Carolina, 1776, Art XLI, p. 1414; Vermont, 1777, Sec. XL, p. 1865; 1786, Sec. XXXVIII, p. 1874; 1793, Sec. 41, p. 1882; Pennsylvania Frames of Government, 1683, Sec. XII, p. 1521; 1696, p. 1535; Constitutions of 1776, Sec. 44, p. 1547; 1790, Art. VII, p. 1553. In 1806 (2 Stats. 381) the Federal government required Tennessee to set

aside large tracts for two colleges and for academies in each county. In enabling acts admitting States into the Union the Federal government has consistently set aside lands for the exclusive use of public schools, seminaries and universities. Ohio, 1802, 2 Stats. 173; Indiana, 1816, 3 Stats. 289; Illinois, 1818, 3 Stats. 428; Alabama, 1819, 3 Stats. 489; Missouri, 1820, 3 Stats. 545; Arkansas, 1836, 5 Stats. 58; Iowa, 1845, 5 Stats. 789; Wisconsin, 1846, 9 Stats. 56; Minnesota, 1857, 11 Stats. 166; Oregon, 1859, 11 Stats. 383; Nevada, 1864, 13 Stats. 30; Nebraska, 1864, 13 Stats. 47; Colorado, 1875, 18 Stats. 474; Oklahoma, 1906, 34 Stats. 267.

Thomas Jefferson in 1779 introduced in the legislature of Virginia his famous "bill for a more general diffusion of knowledge" which embodied a plan for a public school system in that State. (Edgar W. Knight—"Public Education in the South," page 114.) In his first message to Congress in 1790, Washington pointed out the importance of education for the maintenance of the security of the Constitution.

Congress at an early date recognized that public instruction is a governmental function. In the Act of July 13, 1787, establishing the Northwest Territorial Government it provided "religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

In Texas the maintenance of public schools and universities was considered a governmental function before the Republic of Texas became a State. The thought of creating a State University originated at least as early as January 26, 1839, when the Congress of the Republic by an Act of that date (Laws of 1839, p. 134) required

the President to set aside fifty leagues of public land for the establishment and endowment of two colleges or universities thereafter to be created. This was followed by the Act of February 11, 1858 (Laws of 1858, p. 148), creating a University of Texas and setting aside additional lands and appropriating $100,000 for its establishment, which Act recited that:

> "From the earliest times, it has been the cherished design of the people of the Republic and of the State of Texas, that there shall be established, within her limits, an institution of learning, for the instruction of the youths of the land in the higher branches of learning * * * and as a means whereby the attachment of the young men of the State to the interest, the institution, the rights of the State, and the liberties of the people, might be encouraged and increased, and, to this end, hitherto liberal appropriations of the public domain have been made."

As heretofore stated, the present University of Texas was actually established in 1881 pursuant to the constitutional mandate of 1876.

The maintenance of the University of Texas is therefore clearly a governmental function. The contentions of respondent to the contrary were overruled by both the lower courts.

It is therefore submitted that the State of Texas has the sovereign right to realize upon its oil and gas resources under these lands free from any control or impediment on the part of the United States, and any attempt by the latter to interfere therewith is derogatory of the State's dignity, subversive of its powers and repugnant to its paramount authority.

II.

**The leases under which petitioner produced the oil and gas from the public domain of the State of Texas covered thereby, and petitioner as the owner thereof, are the means, agencies and instrumentalities chosen by the State of Texas for developing the State's oil and gas, and the United States had no power or authority to levy the income taxes on the income of petitioner from its leases.**

Petitioner's income, upon which it paid the income taxes sued for, was derived solely from its operations under oil and gas leases granted under the Act of March 16, 1917. Laws of 1917, Chap. 83, p. 158, 35th Leg. (Appendix p. 87), upon university lands. (Copies of these leases are set forth at pages 13 and 17 of the Record.)

With the development of the oil industry, it became apparent that parts of the State's public lands probably contained oil, gas and other minerals. The State, not desiring to carry on itself operations for oil and gas, which are, as is well known, of a more or less speculative character in unproven territory, but desiring to have the mineral resources under these lands developed in order that it and its university might derive a benefit therefrom, enacted a series of laws under which oil and gas permits and leases might be granted.

The sole purpose of the State in granting these leases was to realize upon its interest in the minerals through its reserved royalties. This is obvious from the leasing acts themselves and the frequent legislation on the subject. Petitioner alleged such to be its purpose (R. 6, par. VIII), and it was admitted in the agreed Statement of Facts. (R. 25, par. VIII.) The end sought by the

State was entirely different from that in the outright sale of public lands to homesteaders. The purpose in the latter case is to encourage settlers and gradually to transfer the public domain into the hands of private owners instead of having them perpetually retained by the State. In those cases the State after the sale is no longer interested in the lands and retains no connection with them. As to these oil leases, however, the State is not granting them for the private benefit and profit of the lessee. Its end is to have the minerals brought to the surface where they may be converted into money. Its royalty portion of the oil at the surface, produced at the expense and risk of the lessee, is of more value to the State than all the oil below the ground. It therefore grants these leases for the purpose of obtaining this royalty, and lets the lessee have its portion of the oil as compensation for its services and risks in producing the State's royalty part.

We will briefly review the history of the Texas Leasing Acts. The first was that of April 9, 1913 (Ch. 173, p. 409, 33rd Leg.). This embraced all public lands of the State, but, as it had certain practical defects, it was superseded by that of 1917 and will not be referred to further. However in Section 1 it set forth the State's policy as follows:

> "It is declared to be the policy of the State to open all such lands to mineral prospecting and development on a system providing for the payment into the State Treasury to the credit of the permanent free school, university, asylum and other funds, of certain rents and royalties upon the gross output of any minerals or mineral product thereon."

The 1913 Act was repealed and superseded by that

of March 16, 1917, Ch. 83, p. 158, 35th Leg. (Appendix page 87.) Petitioner's leases were issued under the 1917 law. Its provisions will be discussed more in detail later, but under it the State retained in all leases a royalty equal to one-eighth of the gross production of oil and one-tenth of the gas. The end sought was further stated in the emergency clause:

> "The fact that portions of the mineral statute are so incongruous and difficult of interpretation as to be almost inoperative and the fact that *a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed* * * * creates an emergency," etc.

The emergency clause of the Act of February 1, 1921 (Ch. 6, p. 7, 37th Leg.), which merely extended the time for prospecting under permits, recited:

> "The fact that the term of the permit is too short to secure adequate development of the mineral resources of the State, creates an emergency."

This Act of 1917 has been amended from time to time in minor particulars, and still remains the fundamental law governing leases on all State lands except those of the university.

However, in 1924, oil was first discovered on university lands by those who later incorporated petitioner. (Petitioner's two leases were issued in May and July, 1924, after discovery of oil under the underlying prospecting permits.) Special legislation governing the leasing of university as distinguished from other State lands ensued. The 1917 Act was then superseded by that of March 10, 1925, Ch. 71, p. 225, 39th Leg. (Appendix, p. 101.) This and the later Acts embraced only university lands. The 1925 Act provided for com-

petitive bidding for leases. The royalties were fixed at one-eighth of the value of the oil and gas, but there was competition as to the cash bonuses to be paid. In 1927 the constitutionality of the 1925 Act was attacked in the Supreme Court of Texas in Theisen v. Robison, 117 Tex. 489, hereinafter referred to, and to prevent the 1917 Act being revived if the 1925 Act were declared void, the legislature by the Act of March 31, 1927, Ch. 249, p. 368, 40th Leg. (Appendix, p. 109), provided no leases should be granted on university lands if the 1925 Act were stricken down.

A controversy arose concerning certain sales of leases to be held in January, 1929, and the legislature, acting under the recited "necessity for the immediate protection of the university funds," by the Act of January 11, 1929, Ch. 2, p. 6, 41st Leg. (Appendix, p. 111), repealed the law of 1925, withdrew all university lands from leasing "until such time as the legislature may enact laws deemed adequate for the protection of the university funds," and attempted to prevent the sales advertised for January.

The present leasing law is that of March 29, 1929, Ch. 282, p. 616, 41st Leg. (Appendix, p. 114.) Prior to that law all leases were issued by the Commissioner of the General Land Office. This Act placed the leasing in the hands of a board consisting of the Commissioner and two members of the Board of Regents of the university. Leases are let under competitive bidding, the bids specifying both the royalties and the cash bonus to be paid. A minimum royalty of one-eighth of the oil and gas is provided in the Act with authority given to the board to increase this minimum as to any tract or tracts. The board may reject all bids.

This brief review of the history of the Leasing Acts demonstrates the efforts of the State to obtain as great returns from its minerals as possible, and shows its purpose in granting leases is to realize upon its own minerals and not merely to allow private lessees to produce them for their individual profit.

This has been further emphasized by the State in filing its brief as *amicus curiae* urging the importance to the State of a decision in this case in favor of petitioner as a reason why the certiorari should have been granted. The State is vitally concerned in this petitioner's success as an agency of the State, and being such agency, the State is interested in protecting it from interference and taxation by another government.

The general provisions of the Act of 1917 may be summarized as follows: All of the university lands, among others, were opened for prospecting for and developing the oil and gas resources and other minerals. An applicant was allowed under certain conditions to obtain a permit to prospect for oil and gas on the land covered by his permit upon the payment of ten cents per acre. Upon oil or gas being discovered within a prescribed time, and the payment of two dollars per acre, the Commissioner of the General Land Office was directed to issue a lease for a term of ten years with an option of renewals. An annual payment of two dollars per acre was required. In addition, the lessee was required to pay the State each month a royalty equal to one-eighth of the gross production of oil and one-tenth of the value of the meter output of all gas disposed of off the premises. The Commissioner was given authority to incorporate in the leases such other terms as he deemed important to protect the interests of the

State, including the right to require the lessee to drill offset wells to prevent drainage by wells on adjacent private lands. No oil or gas could be disposed of by the operator until he obtained a lease.

Petitioner's leases, in addition to reserving the statutory royalties and incorporating the provisions required by the statute, provided among other things: (1) the lessee was required to proceed with reasonable diligence to develop and operate the property for oil and gas, and to operate each producing well so as to produce the oil and gas therefrom; (2) it was required to drill, either voluntarily or on request by the Commissioner, offset wells to prevent drainage by wells on private lands; (3) if the lessee failed to proceed with due diligence to develop and operate the properties or to produce the oil that could be produced from wells, or to pay any royalties, or to comply with any other regulations of the Commissioner reasonably necessary for carrying out the provisions of the statute, the leases were subject to forfeiture.

The State of Texas, in the exercise of its own unrestricted discretion, may decide upon the manner in which its minerals shall be produced. It may produce them directly through its own operations, employing drilling crews and other servants just as it performs many of its other functions. The experience of the oil industry, however, has demonstrated that the interests of a landowner are best subserved by his having his minerals developed through leases rather than through his own efforts. He receives a portion of the gross production through his reserved royalties, which is delivered to him with no expenditure or risk. The lessee as its compensation for thus producing the landowner's royalty

oil receives the remaining part. The State in pursuing this method has done only what the ordinarily prudent private individual would do, and has been doing for centuries, in connection with various other kinds of minerals. The oldest tin mines of England, once worked by the Romans, were operated under the same system. Theisen v. Robison, 117 Tex. 489, 504. The United States has preferred to develop the minerals upon Indian lands in Oklahoma through lessees rather than through direct government operations.

But the questions of whether petitioner and other oil and gas lessees of these State lands are such agencies of the State that may not be taxed by the United States, and whether an income tax upon their net income is one of the forbidden taxes, have been foreclosed by this Court in its decisions involving the right of Oklahoma to tax lessees of Indian lands holding leases from the Federal government. This Court has consistently held them to be governmental agencies and exempt from various kinds of taxes attempted to be levied by Oklahoma, including an income tax similar to the one involved in this cause. These cases are Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292 (a tax on the gross production of a mine); Indian Territory Illuminating Oil Company v. Oklahoma, 240 U. S. 522 (a tax upon the leases); Howard v. Gipsy Oil Company, 247 U. S. 503; Large Oil Company v. Howard, 248 U. S. 549, reversing the Supreme Court of Oklahoma decision in 63 Okla. 143 (a tax on the gross production after deduction of the royalty); Gillespie v. Oklahoma, 257 U. S. 501 (an income tax upon the net income of the lessee); Jaybird Mining Company v. Weir,

271 U. S. 609 (an ad valorem tax on the minerals mined).

The applicable rules are succinctly stated by Justice Holmes in the Gillespie case as follows:

> "The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce cannot be avoided if the States are to exist and make laws. New York, New Haven & Hartford R. R. Co. v. New York, 165 U. S. 628. Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 616. The rule as to instrumentalities of the United States, on the other hand, is absolute in form and at least stricter in substance. Williams v. Talladega, 226 U. S. 404, 416, 417, 419. Johnson v. Maryland, 254 U. S. 51, 55. 'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them.' 240 U. S. 530. The step from this to the invalidity of the tax upon income from the leases is not long.
>
> "In cases where the principal is absolutely immune from interference an inquiry is allowed into the sources from which net income is derived and if a part of it comes from such a source the tax is *pro tanto* void; Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 158 U. S. 601; rule lately illustrated by Evans v. Gore, 253 U. S. 245; and applied in a case somewhat like the present by the Supreme Court of Hawaii, Oahu R'y & Land Co. v. Pratt, 14 Hawaii 126. Whether this property could be taxed in any other form or not, it cannot be reached as profits or income from leases such as those before us."

Further quotations from these opinions will not be made. They decisively settle the fundamental principles involved in this cause. They establish the two propo-

sitions: first, that an oil and gas lessee holding under one government falls within that class of instrumentalities that may not be taxed by the other government; and, second, that an income tax on the lessee's income is one of the forbidden taxes.

Petitioner, as a lessee from the State of Texas, is to the same extent and for like reasons exempt from the Federal income tax. In The Collector v. Day, 78 U. S. (11 Wall.) 113, 127, this Court said:

> "And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and, for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, exempt equally from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. * * * In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; and any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

In Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 584, it is stated:

> "As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."

See also United States v. Railroad Company, 84 U. S.

(17 Wall.) 322, 327; Ambrosini v. United States, 187 U. S. 1, 7.

The decision in the Gillespie case as to the Federal lessee applies with equal force to the petitioner in this cause. Under that case this State lessee is an instrumentality of the State, and as such the United States may not tax its income from its leases.

These Oklahoma cases, and particularly Gillespie v. Oklahoma, have been frequently referred to by this Court as being among the leading authorities on the question of exemption of governmental instrumentalities. Long v. Rockwood, 277 U. S. 142, 148; The Macallen Company v. Massachusetts, 279 U. S. 620, 627; Northwestern Mutual Life Insurance Company v. Wisconsin, 275 U. S. 136, 140, in which it was said:

> "Certainly since Gillespie v. Oklahoma, 257 U. S. 501, 505, it has been the settled doctrine here that where the principal is absolutely immune, no valid tax can be laid upon income arising therefrom."

In Panhandle Oil Company v. Knox, 277 U. S. 218, they are referred to as follows:

> "The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions. * * * Choctaw & Gulf R. R. Co. v. Harrison, 235 U. S. 292. Indian Oil Co. v. Oklahoma, 240 U. S. 522. * * * The strictness of that rule was emphasized in Gillespie v. Oklahoma, 257 U. S. 501, 505."

When the underlying reasons and the long line of decisions of this court, beginning with M'Culloch v. Maryland, 4 Wheat. 316, are considered, it inevitably follows that one government may not tax the other govern-

ment's oil and gas lessees. We will not review in detail the numerous decisions of this court, but desire to call attention merely to a few typical extracts from its opinions:

"There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds. * * *

"These are, 1st, that a power to create implies a power to preserve. 2nd, that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, those powers to create and to preserve. 3rd, that where the repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. * * *

"The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." M'Culloch v. Maryland, 4 Wheaton 316.

"Congress has power 'to borrow money on the credit of the United States.' The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly on that contract, while subsisting and in full force. The power operates upon the contract the instant it is framed, and must imply a right to affect that contract. * * *

"The right to tax the contract to any extent, when made, must operate upon the power to borrow be-

fore it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of the government. It may be carried to an extent which shall arrest them entirely." Weston v. City Council of Charleston, 27 U. S. (2 Peters) 449, 465, 466, 468; Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 586; The Macallen Company v. Massachusetts, 279 U. S. 620, 624.

"Is not compensation the means by which his services are produced and retained? It is true it becomes his when he has earned it. If it can be taxed by a State as compensation, will not Congress have to graduate its amount, with reference to its reduction by the tax? Could Congress use an uncontrolled discretion in fixing the amount of compensation, as it would do without the interference of such a tax?" Dobbins v. Commissioners of Erie County, 41 U. S. (16 Peters) 435, 448.

"And it must be always remembered, if the right to impose a tax at all exists on the part of the other government, 'it is a right which in its nature acknowledges no limits.' And the principle is equally true in respect to every other power or function of a government subject to the control of another." Bank of Commerce v. New York City, 67 U. S. (2 Black) 620, 634.

"This carries with it an exemption of those agencies and instruments from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other." United States v. Railroad Company, 84 U. S. (17 Wall.) 322, 327, 328.

"Applying this language to these municipal securities, it is obvious that the taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution." Pollock v. Farmers Loan & Trust Company, 157 U. S. 429, 586.

"And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." Farmers & Mechanics Savings Bank v. Minnesota, 232 U. S. 516, 526.

"With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the State's inability to interfere has been regarded as established since M'Culloch v. Maryland, 4 Wheat. 316. The decision in that case was not put upon any consideration of degree but upon the entire absence of power on the part of the States to touch, in that way at least, the instrumentalities of the United States; 4 Wheat. 429, 430; and that is the law today. Farmers & Mechanics Savings Bank v. Minnesota, 232 U. S. 516, 525, 526." Johnson v. Maryland, 254 U. S. 51, 55.

"The principle set forth a century ago in Weston v. Charleston, 2 Pet. 449, 468 (7 L. Ed. 481), has never since been departed from by this court:

"'The right to tax the contract to any extent, when made, must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government; to any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them

entirely.' Home Savings Bank v. Des Moines, 205 U. S. 503, 513; 27 S. Ct. 571, 51 L. Ed. 901 . . .

"Not only may the power to tax be exercised oppressively, but for one government—State or national—to lay a tax upon the instrumentalities or securities of the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority. See California v. Central P. R. Co., 127 U. S. 1, 41; 8 S. Ct. 1073 (32 L. Ed. 150)." The Macallen Company v. Massachusetts, 279 U. S. 620.

The foregoing quotations apply themselves to the present case without the need of assisting comment. These Federal income taxes are stricken down because they are an impediment upon the power and right of the State of Texas to have its own minerals developed for its use and benefit, in which activity it is beyond the control of the United States. The right to tax these lessees would operate upon the power of the State to grant the leases before that power was exercised, and would have a sensible influence upon the terms the State could require the lessees to accept. The net income of the lessee is the compensation received by it from the State for its services in producing the State's royalty portion of the oil. If the United States may reduce this compensation through the income tax, the State would have to increase it by reducing its reserved royalties, and could not use its uncontrolled discretion in fixing their amount. There is no question of degree of taxation, whether it is burdensome or not, or whether it is universal and undiscriminating.

This burden on the State's lessee is a continuous one, and is even more pronounced than in the case of State or municipal bonds. Just as the power to tax the inter-

est on bonds would affect the rate of interest the State would have to pay and the price for which they could be sold, in the same way the tax would affect the amount a lessee would be willing to pay for the leases (corresponding to the selling price of bonds), and the royalty the State could reserve (corresponding to the interest rate on bonds). Furthermore, when bonds are sold, the contract between the State and the bondholder is completed. Regardless of future changes in Federal income tax rates, the rate of interest on the bonds would remain the same and the State would have received the proceeds of their sale. In the case of these leases this burden and interference by the Federal Government is a continuous one, at all times hindering and impeding the lessee in its operations of the properties and reducing the gross production with the resulting diminution of the amount derived by the State from its royalties.

If the Federal Government may levy this income tax, it is in the position of saying to the State that it must be carried for an interest in all leases executed by the State on its own lands. Such an interest is of a more stringent character than the ordinary working interest. The owner of the usual working interest obtains no part of the oil until the operating lessee has recouped all his expenses, and even then the amount of the working interest is definite and certain. But the interest of the Federal government through its income tax is uncertain and indefinite, the amount being subject to fluctuations each year, dependent not on the will of the State or of the lessee, but upon that of the Federal government. Likewise, the lessee cannot tell during any year what the Federal government's interest will be until after the operations for that year have been entirely concluded.

For example, the rate of the income tax for the calendar year 1925 was not fixed until the 1926 Act was approved on February 26, 1926. Also, the interest of the Federal government is not a true working interest. It is true under the present income tax Act of 1928 losses may be carried forward as a deduction against gross income, but not for more than two years. There is nothing to require the Federal government to allow past losses in past years to be carried forward against gross income in future years. If it may levy this income tax, it may participate in the net income for any year without allowing the lessee to recoup any past losses.

All of these considerations clearly demonstrate the burden this tax places upon the lessee in its operations. It reduces the funds available for further drilling and development of the properties. It makes it uncertain what net return the lessee will derive from the lease, and thus makes for uncertainty as to what additional amounts the lessee can afford to invest in the development and operation of the lease. It is common knowledge that every reduction in the price of crude oil is followed immediately by a decrease in drilling activities generally, and every increase speeds up exploration and development work. The Federal income tax has a similar influence on all such operations. Push this tax to a relatively high level, and drilling operations are immediately curtailed. It must be borne in mind the solution of this question does not depend upon whether the particular rate of income taxation is high or not. If any such tax may be levied, the courts will not inquire whether the specific rate is reasonable or not, and the Federal government may make the rate so high that no lessee, even after obtaining any lease from the State, could af-

ford to operate under it, and thus the State would be prevented from obtaining the development of its mineral resources through these leases, and would be forced to undertake the production of these minerals directly through its own operations. That such may well be the case is pointed out by this Court in Loan Association v. Topeka, 87 U. S. (20 Wall.) 655, where the court said in part:

> "It was said by Chief Justice Marshall, in the case of McCulloch v. The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circulation of all other banks than the National banks drove out of existence every State bank of circulation within a year or two after its passage."

However, all of these considerations were taken into account by this Court when it held in Gillespie v. Oklahoma, *supra,* and the other Oklahoma cases, that oil and gas lessees are within that class of governmental agencies that may not be taxed by another government, and nothing further need be said upon that point. They do not fall within the taxable class as illustrated by Metcalf & Eddy v. Mitchell, 269 U. S. 514, where the taxpayer's work was not of a permanent or continuous character and his employment was more in the nature of simply a contract for a single, casual, or isolated specific piece of work. Petitioner's leases, however, continue as long as oil or gas is produced, and its services are of a continuous nature. The State is interested in the success of each day's operations as its returns are measured by the amount of oil or gas produced that day. The leas-

ing Act provides in many details how its operations shall be carried on, and under the leases it is required to observe all regulations promulgated by the Commissioner of the General Land Office.

Oklahoma vigorously attacked the claim of the lessees to be governmental agencies, but its contentions were consistently overruled. In Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U. S. 522, 524, it asserted that the oil company occupied "the position of an independent contractor, acting for itself and in its own behalf, in a contract with the Osage Indian Tribe," and therefore the relation of principal and agent between it and the government did not exist. This Court overruled that argument as the question does not depend upon whether the technical relation of principal and agent exists.

In Gillespie v. Oklahoma, 257 U. S. 501, 502, it argued that the income tax "attaches after all of the functions of the Federal agency have been performed freely and untrammeled, after the lessee has received his compensation and after, with the close of his year's business, it is found that he is possessed of a net income." This Court likewise refused to subscribe to that position.

The 16th Amendment to the Constitution did not extend the taxing power of the United States to new or excepted subjects, but merely abrogated the requirement in Section 2, Article I, that direct taxes be apportioned among the several States. Brushaber v. Union Pac. R. R. Co., 240 U. S. 1, 17-19; Stanton v. Baltic Mining Co., 240 U. S. 103, 112-113; Peck & Co. v. Lowe, 247 U. S. 165, 172; Evans v. Gore, 253 U. S. 245. That amendment therefore had no effect upon the exemption of governmental agencies from taxation.

We submit, therefore, that under Gillespie v. Oklahoma, *supra*, and the other Oklahoma cases, and the reasoning that necessarily led to the holdings in those cases, petitioner is such an agency and instrumentality of the State of Texas as is exempt from the Federal income tax.

As the Circuit Court of Appeals has referred to the decision in Theisen v. Robison, 117 Tex. 489, we will discuss it briefly. That court referred to it as follows:

> "That legislation (referring to the 1925 Leasing Act) was attacked as being in violation of a constitutional provision which permitted only the sale of university lands; but the Supreme Court of Texas held that the statutory leases constituted sales, and that the oil and gas when appropriated by the lessees formed no part of the university's permanent fund. Theisen v. Robison, 8 S. W. (2) 646. The royalty interest of the State is not involved, as the income tax act does not attempt to reach it. * * *
>
> "The State of Texas has no occasion to claim immunity for itself, and has not sought to exempt lessees of its university lands from Federal income taxation. On the contrary, it has sold the mineral rights here involved and has provided that the rights of the purchaser or lessee 'shall be subject to taxation as is other property.' It cannot be doubted that the sovereign has the power to subject interests which it has sold in public lands to taxation." (R. 48.)

At this point we will deal primarily with the part referring to these minerals as having been sold. We will later demonstrate that no affirmative action by the State exempting these lessees from Federal taxation is necessary, and that the State by providing that the leases "shall be subject to taxation as is other property" referred only to State and not Federal taxation.

Respondent has argued in the lower courts that under the Theisen case the State has sold these minerals, and petitioner's income from the sale of its portion of the oil is in the same class as any profit an ordinary homesteader might make on the resale of lands he had bought from the State, and therefore petitioner's income is subject to Federal taxation. The District Court considered the effect of the Theisen case (see R. 37, listing it as one of cases considered), and held it did not have the effect attributed to it by respondent. The Circuit Court of Appeals also considered it and in substance sustained the District Court on that point. If it had differed with the District Court, it would have held that petitioner was not a State instrumentaliy. It did not do this, but based its decision solely on its construction of Section 27 as a waiver by the State of the exemption petitioner otherwise was entitled to.

The difference between a resale by a homesteader of land bought from the State and the income of the petitioner from the sale of oil produced by it under State leases is obvious. It has always been true that ordinary public land when sold by one government becomes subject to taxation by the other government because after its sale the former has no longer any connection with or interest in the land. This was pointed out in the early case of Weston v. City of Charleston, 2 Peters 449, 468:

> "*When lands are sold, no connection remains between the purchaser and the government.* The lands purchased become a part of the mass of property in the country with no implied exemption from common burthens. All lands are derived from the general or particular government, and all lands are subject to taxation. Lands sold are in the condi-

tion of money borrowed and repaid. Its liability to taxation in any form it may then assume is not questioned. The connection between the borrower and the lender is dissolved."

In Van Brocklin v. Tennessee, 117 U. S. 151, 169:

"And the reason why, after lands have been duly entered at the land office, and everything has been done to entitle the party to a patent, they have by long usage, confirmed by the decisions of this court, been considered, before the patent is actually taken out, as subject to State taxation, is that *the United States have nothing but the naked legal title, and the lands are in truth no longer public property*, but have become private property."

But the connection between the State and these lessees was not dissolved at the granting of these leases. On the other hand the connection between the two began, instead of ending, with the granting of the leases. The State is vitally connected with the lessee's operations every minute as it gets the proceeds of one barrel of oil out of every eight produced by the lessee, and the more the lessee produces the greater the return to the State.

The respondent has quoted particularly the following portion of the opinion in the Theisen case, at page 511 of 117 Tex.:

"The leases convey all the oil and gas in granting the right to find, produce, and appropriate all of them, in consideration of the payment of stipulated sums, and also the value of a stated fraction of the oil and gas produced. The oil and gas when appropriated form no part of the university's permanent fund. While in place, before being sold, the oil and gas were potential assets of the fund. Like any

> other seller, the State, after parting with its title, no longer owns that which it has sold, but the State receives and turns over all the proceeds of sale when it receives and turns into the permanent university fund the royalties and other payments required by the Acts. As a result of the sale, the purchaser owns the oil and gas, and the university permanent fund owns the entire proceeds of their sale."

As stated above both the lower courts correctly held that case did not apply. We will discuss what the Theisen case actually decided.

Section 11 of Article VII of the Constitution provided that the lands set apart for the university and their proceeds should constitute "a permanent university fund," which fund must be invested and kept intact. Section 12 then provided:

> "The land herein set apart to the university fund shall be *sold* under such regulations, at such times, and on such terms as may be provided by law."
> • • •

After the 1925 Leasing Act was passed Theisen filed with Robison, the General Land Commissioner, an application under the 1917 Act for a mineral prospecting permit for certain university land, which Robison refused as the 1917 Act had been repealed by that of 1925. Theisen then sought a mandamus in the Supreme Court to require Robison to issue the permit on the ground that the 1925 Act was unconstitutional and that of 1917 was therefore still in effect. The Board of Regents of the university intervened and contended both the 1917 and 1925 Acts were void as violating the constitutional provision that the lands "shall be sold." Such a position was a direct attack on the validity of

all leases theretofore granted, including those of petitioner, and it intervened to protect its rights. There was only one question involved and that was whether the Leasing Acts were constitutional. As the Supreme Court said at page 499:

> "The principal question in the case is whether the Acts of 1917 and 1925 violate Section 12 of Article 7 of the Constitution, which reads as follows:
>
> "'The land herein set apart to the university fund shall be *sold* under such regulations, at such times, and on such terms as may be provided by law' * * *."

The grounds of the attack were summarized by the court as follows (p. 502):

> "The two acts are mainly assailed on the ground that they provide for a permit or lease conferring on the permittee or lessee no greater right than a mere license, exercisable at the permittee's or licensee's option, to prospect for oil or gas, when the Constitution mandatorily requires the legislature to dispose of the university lands by sale only and forbids the grant of a mere optional license."

There are two lines of argument as to the nature and effect of an oil and gas lease. One construction is that, as oil and gas are fugitive minerals, the owner of the land has no title to them while under the ground and obtains title only to such as may be produced and reduced to possession, and his title vests only when they are thus brought to the surface. As the landowner thus has no title to the oil and gas in place, his lease cannot and does not transfer to the lessee any title whatsoever to them while in place, and the lessee obtains only a license to prospect for and produce the oil and gas when

found and obtain title to such oil as may be produced. Under the other line of argument the landowner has a present vested title to the oil and gas in place, and this title passes to the lessee immediately upon the execution of the lease. The only difference between the two constructions is that under the second rule the title to the minerals passes to the lessee and upon a forfeiture of the lease the title reverts to the landowner, while under the first rule this shifting of title does not occur. The Supreme Court of Texas has long since adopted the second construction of oil leases, and the substance of its holding in the Theisen case was that, since the leases conveyed a present title to the minerals in place, and a conveyance of a title is included in the definition of a "sale," these leases complied with the constitutional provision that the university lands must be "sold."

The legal grounds upon which the Supreme Court sustained the Leasing Acts may be summarized as follows: (1) The word "sold" as used in the Constitution should be given the meaning it had at common law. (2) For centuries the uniform method by which landowners converted their minerals into money has been the execution of leases with a royalty reserved. (3) The court in Benavides v. Hunt, 79 Tex. 383, Texas Company v. Daugherty, 107 Tex. 226, and Stephens County v. Mid-Kansas Oil & Gas Company, 113 Tex. 160, had held that an ordinary oil and gas lease operated to convey the title to the minerals in place immediately to the lessee, subject to reversion to the lessor on forfeiture of the lease. (4) As title to the minerals in place thus passed to the lessee immediately, such a lease was a present conveyance of an interest in land, and, being such a con-

veyance, constituted a sale within the common law meaning of that term. (5) The leases authorized by the Leasing Acts had the same effect, the Supreme Court saying:

> "It is unthinkable to treat the ordinary lease as conveying minerals in place and to refuse to give that effect to the grants authorized by these Acts."

(6) These leases therefore, in passing the legal title to the oil in place to the lessee, constituted sales within the meaning of Section 12 of the Constitution.

The relation existing between these lessees and the State is the same as that between the lessor and lessee in the ordinary mineral lease of private lands. Upon this the Supreme Court said in Greene v. Robison, 117 Tex. 516, 535 (decided the same day as the Theisen case):

> "A sale or lease by the State is subject to the same rules of law that are applied to ordinary business or commercial leases. In the absence of an express provision, there is an implied covenant for exploration, development, and operation. Freeport Sulphur Co. v. American Sulphur Royalty Co., not yet reported (p. 439 ante, 6 S. W. 2d series, 1039); and upon abandonment of the property for the purposes of the lease, the oil and gas reverts to the vendor or lessor, as was held in the cases of Grubb v. McAfee, 109 Texas 527, 212 S. W. 464, and Texas Co. v. Nelson Davis, 113 Tex. 321, 254 S. W. 305."

There is no substantial difference in oil and gas leases under either rule of construction, as pointed out in Stephens County v. Mid-Kansas Oil & Gas Company, 113 Tex. 160, 173, where the Supreme Court quoted the following from Hardwicke on "Innocent Purchaser of Oil and Gas Lease":

"'A lessee has no more privileges under one type of instrument than he has under the other. The instruments simply provide for the development of the land and distribution of the minerals which are discovered. For this reason, the parties usually attach little or no significance to the language in the granting clause. The thing that the landowner is interested in giving, and the thing that the operator is interested in obtaining, is the right to enter on the land, to the exclusion of all others, for the purpose of discovering and producing minerals that exist, and to distribute such minerals in accordance with the lease, usually one-eighth to the landowner and seven-eighths to the operator'."

The Circuit Court of Appeals referred to the fact that in the Theisen case the Supreme Court of Texas held that the oil and gas, when appropriated by the lessees, formed no part of the university's permanent fund. This might possibly lead to the erroneous belief that, after the leases are executed, the State has no further interest in the oil. In the usual private oil lease the royalty reserved is a specified fraction of the oil itself, and the lessor may require the lessee to deliver to him his royalty oil in kind. Even under such leases, however, the lessee customarily sells the lessor's royalty oil along with the lessee's, and the purchaser remits directly to the lessor the proceeds of the royalty oil. In the 1917 State leases the royalty reserved was not one-eighth of the oil in kind but a royalty of one-eighth of the value of the gross production of petroleum. The State preferred for the lessee to attend to the sale of all the oil and be responsible for the State's receiving one-eighth of the proceeds. As the court held title to all the oil in place passed to the lessee, it logically stated that, as long as the lease remained in effect, the lessee

owned all the oil and the university fund owned one-eighth of the proceeds of its sale. For the purposes of the present case it is immaterial whether the State's royalty was one-eighth of the oil in kind or one-eighth of the value of the gross production.

Whether the leases are construed as passing title to the oil in place or not is immaterial. Under either construction title to the lessee's portion of the oil vests at least at the moment it is produced and reduced to possession. Therefore when it sells the oil, it has in the same sense resold oil which it has purchased. If its income is not subject to the Federal income tax in the case where it obtains title only as the oil pours from the mouth of the well, the fact that its title to the oil vested while the oil was still below the surface would not alter the situation at all.

The State intended the relation between it and these lessees to be that existing between the ordinary lessor and lessee of private mineral lands, regardless of whether the leases would be called technically sales or any other name. Its purpose was that of any private landowner—the receipt of royalties free of the expense and risk of producing them. It will be noted how frequently the Supreme Court in the Theisen case, the legislature in the Leasing Acts, and the leases themselves use the terms "lease," "leases," and "lessee." They do not speak of the State as "vendor" or "seller," or of the lessee as "vendee" or "purchaser." They are continuously referred to as "lessor" and "lessee," and the instruments as "leases." Petitioner's leases are on their faces designated "Oil and Gas Lease No. 8560," (R. 13), and " Oil and Gas Lease No. 8607." (R. 17.)

The Theisen case decided only one point and that was

that the Leasing Acts were not unconstitutional, and that is the only point upon which it is binding in any way upon this Court. The question of whether the lessees were such agencies of the State as are exempt from Federal taxation was not before the court in that case.

Just as this Court said in reference to national banks in Farmers & Mechanics National Bank v. Dearing, 91 U. S. 29:

> "Of the degree of the necessity for creating them Congress is the sole judge,"

and again in United States v. Railroad Company, 17 Wall. (84 U. S.) 322, 330:

> "Should it (the city) endeavor by the expenditure of this money or this credit to bring this vast business into its own State, and make its commercial metropolis great and prosperous, or should it refuse to incur hazard, allow other States to absorb this commerce, and Baltimore to fall into an inferior position? This was a question for the decision of the city under authority of the State. It was a question to be decided solely with reference to public and municipal interests."

so here, as to all questions concerning the creation of these leases and their terms, the relation to exist between the State and its lessees, whether the title to all the minerals in place should be vested in the lessee subject to forfeiture or whether the State should retain title thereto until actually produced, the State was the sole judge.

The United States retains no title to an invention when it grants a patent, yet a State may not tax the income from it. Long v. Rockwood, 277 U. S. 142. It

has no financial interest in national banks and owns no stock in them, but they may not be taxed by the States except when permitted by Congress. Owensboro National Bank v. Owensboro, 173 U. S. 664. It retains no title to franchises granted to railroad companies, but the States may not tax those franchises. California v. Central Pacific Railway Co., 127 U. S. 1. It owns no interest in telegraph companies, but their services to the Federal government may not be taxed by the States. Telegraph Co. v. Texas, 105 U. S. 460. Lessees of Indian oil-lands are independent contractors but are free from State taxation. Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U. S. 522. Thus the mere legal relationship between the State and petitioner as to the legal title to the oil before being produced is wholly immaterial.

The point involved is not the manner in which the agency is created but the effect of the tax. In the last analysis the test can not be more clearly stated than it was in Railroad v. Peniston, 85 U. S. (18 Wall.) 5, 36:

> "It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, *not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax;* that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power."

As stated in Ambrosini v. United States, 187 U. S. 1, "They are not mere individual undertakings to secure a personal privilege, as suggested by the court below" but means for the development of the State's resources for its own benefit.

The State granted these leases to obtain for itself a percentage of the gross proceeds of the oil produced, just as this Court said in reference to the Indian leases in Jaybird Mining Co. v. Weir, 271 U. S. 609, 614:

> "In this case the lease was made to secure the development of the lands and obtain for the benefit of the restricted Indian owners a percentage of the gross proceeds of the ores to be mined."

The fact that the lessees have derived an income from the leases is of no material consequence, for as was said in United States v. Railroad Company, 17 Wall. (84 U. S.) 322, 331:

> "It was not a loan for the benefit of the railroad; it was for the benefit of the city solely. That the railroad company was also benefited did not affect the purpose of the transaction."

As the State of Texas is entitled to have this petitioner free from all control by the United States, the taxes involved may not be sustained by simply calling the leases "sales" in the usual meaning of that term. The mere fact that the leases were interpreted as sales within the meaning of the Texas Constitution does not remove them from that class of instrumentalities that are exempt from Federal taxation. Just as the States may not justify an unconstitutional tax by applying to it a delusive name, so the United States may not tax an exempt subject by the use of an inapt characterization.

In Choctaw, Oklahoma & Gulf Railroad Company v. Harrison, 235 U. S. 292, 298, it is said:

> "Neither State courts nor legislatures by giving a tax *a particular name*, or by the use of some form of words, can take away our duty to consider its

real nature and effect. Galveston, Harrisburg & San Antonio R'y v. Texas, 210 U. S. 217, 227."

In Lacoste v. Department of Conservation, 263 U. S. 545, 550:

> "This court will determine for itself what is the necessary operation and effect of a State law challenged on the ground that it interferes with or burdens interstate commerce. *The name, description or characterization* given it by the legislature or the courts of the State will not necessarily control. Regard must be had to the substance of the measure rather than its form."

In Macallen Co. v. Massachusetts, 279 U. S. 620, 626:

> "If, by varying the form—that is to say, if, by using one *name* for a tax instead of another, or imposing a tax in terms upon one subject when another is in reality aimed at—the substance and effect of the imposition may be changed, constitutional limitations upon powers of taxation would come to naught."

In Mountain Timber Company v. Washington, 243 U. S. 219, 237:

> "The question whether a State law deprives a party of rights secured by the Federal Constitution depends *not upon how it is characterized*, but upon its practical operation and effect."

The necessity of freedom of action on the part of both State and Federal governments requires that the doctrine of the exemption of governmental instrumentalities be not narrowly applied.

In Jaybird Mining Company v. Weir, 271 U. S. 609, 613, it is said:

> "It is elementary that the Federal government in

all its activities is independent of State control. This rule is broadly applied."

In the recent case of Macallen Company v. Massachusetts, 279 U. S. 620, this Court, after discussing the principles of exemption of governmental instrumentalities, said at page 631:

> "A liberal application of the foregoing principles, which find confirmation especially in the later decisions of this court, is essential to the preservation of the constitutional limitations imposed upon the taxing power of the States. Let it once be conceded that such limitations may be evaded by the adoption of a delusive name to characterize the tax or form of words to describe it, and the destruction of the vitality of these necessary safeguards will soon follow."

This court has held exempt from State taxation varied forms of Federal instrumentalities. Patents on inventions, Long v. Rockwood, 277 U. S. 142; national banks, Owensboro National Bank v. Owensboro, 173 U. S. 664; Federal bonds and securities, Bank of Commerce v. New York City, 67 U. S. (2 Black) 620; Bank Tax Case, 69 U. S. (2 Wall.) 200; Home Savings Bank v. Des Moines, 205 U. S. 503; Miller v. Milwaukee, 272 U. S. 713; franchises to railroads, California v. Central Pacific R'y Co., 127 U. S. 1, and to telegraph companies, Telegraph Company v. Texas, 105 U. S. 460; Williams v. City of Talladega, 226 U. S. 404; sellers of gasoline to the Federal government, Panhandle Oil Company v. Knox, 277 U. S. 218, Graysburg Oil Company v. Texas, 278 U. S. 582. Petitioner is as important an agency of the State of Texas as any of these were of the United States.

We submit, therefore, that petitioner, as an agency of the State, is exempt from the Federal income taxes.

## III.

**By Section 27 of the 1917 Act the State of Texas did not grant permission to the United States to levy these income taxes upon its agencies, and no such taxes may be levied without the express consent of the State.**

The Circuit Court of Appeals reversed the judgment of the District Court on the sole ground that by Section 27 of the 1917 Act, which reads "Rights acquired under this Act shall be subject to taxation as is other property," the State gave its consent to the levy of these taxes by the Federal government. That court said:

> "The State of Texas by throwing the leases on university lands open to taxation generally, withdrew from the lessees all rights of exemption which might otherwise have existed." (R. 49.)

The court apparently treated the taxation of petitioner as a matter in which the State had no concern, and as if by this so-called waiver the State waived no rights of its own but a mere private right of petitioner. It further apparently was under the impression that the State by some affirmative statute must declare these lessees to be exempt from Federal taxation. We call the attention of the court particularly to the following from that court's opinion:

> "It may be assumed without being decided that the State was entitled to claim exemption for itself, or even for appellee as its instrumentality, in developing the public domain. * * * The State of

> Texas has no occasion to claim immunity for itself, and has not sought to exempt lessees of its university lands from Federal income taxation." (R. 48.)

When the importance of the principles involved is considered, it is impossible to construe Section 27 as a waiver by the State of all the rights that would otherwise accrue to it. These principles are not embraced in any express provision of the Constitution, but, as this court said in M'Culloch v. Maryland, *supra:*

> "There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds."

If the Circuit Court of Appeals is correct, then the State of Texas has waived valuable constitutional rights of the State itself. It must always be remembered that this exemption of governmental agencies has been read into the Constitution for the protection of the State and Federal governments from encroachments by the one upon the exercise of the powers of the other. The individual welfare of the agency was not the reason for the origin of the rule. It was only because taxation of the agency tended to hinder it in the performance of its designated functions for the State that the rule was invoked. Therefore, to say that the State of Texas has waived the rights of its agency is to say that the State has waived its own rights. This was pointed out by the State in the brief it has heretofore filed in this case as *amicus curiae.*

This has been forcibly illustrated by the Supreme

Court of Texas in State v. Texas & Pacific Railway Co., 100 Texas 279, 283, in holding invalid a State occupation tax as to the railroad company whose charter was granted by the United States Congress for Federal purposes. In that case the court said:

> "The immunity is thus given to these so-called governmental agencies, *not as a private right of their own merely,* but as essential to the security of the rights of the government and the discharge of the duty which they are held to have assumed towards the government, which, it has been thought, would be unduly obstructed by a power in the States to impose taxes upon their operations. The power to tax, it has been said, is the power to destroy, and the existence of such a power in the States over the instrumentalities of the United States has always been regarded by the Supreme Court as inconsistent with the power of the Federal government to establish such agencies, and to provide for and enforce the efficient discharge of their duties to it. *It is the interest of the government, therefore, that controls, and not simply that of the agent.* If the right were recognized in such agencies by engagements with the States, to take on or throw off, at pleasure, the immunity deemed so essential to their efficiency, the great arguments by which, with such pains, the doctrine has been built up, would dwindle into insignificance."

If these lessees are exempt under the Constitution and under the compact between the United States and the Republic of Texas, their exemption need not be buttressed by any statutory declaration by the State to that effect. On the other hand, if they are not exempt under the Constitution and that compact, then no statute or other act of the State can grant them such exemption. Therefore, there is no necessity for the State to act affirmatively on the subject.

If these principles are of so vital importance to both the Federal and the State governments, neither will be held to have waived them unless such waiver is expressed in clear and unmistakable terms. This is the rule laid down by this Court in numerous cases.

> "Whether the property of one of the States of the Union is taxable under the laws of that State depends upon the intention of the State as manifested by those laws. But whether the property of the United States shall be taxed under the laws of a State depends upon the will of its owner, the United States, and *no State can tax the property of the United States without their consent.*" Van Brocklin v. Tennessee, 117 U. S. 151, 175.

> "It follows then necessarily from these conclusions that the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, *were it not for the permissive legislation of Congress.*" Owensboro National Bank v. Owensboro, 173 U. S. 664, 668.

> "It is elementary that the Federal government in all its activities is independent of State control. This rule is broadly applied. And, *without congressional consent*, no Federal agency or instrumentality can be taxed by State authority." Jaybird Mining Company v. Weir, 271 U. S. 609, 613.

In Bank of California v. Richardson, 248 U. S. 476, in speaking of the section of the United States Revised Statutes defining the taxes States might levy on national banks, this Court said at page 483:

> "There is also no doubt from the section that it was intended to comprehensively control the subject with which it dealt and thus to furnish the exclusive rule governing State taxation as to the Federal

agencies created as provided in the section. All possibility of dispute to the contrary is foreclosed by the decisions of this court."

Upon the same subject, in First National Bank v. Adams, 258 U. S. 362, this Court said at page 364:

> "Section 5219 Revised Statutes (copied below) prescribes the full measure of the power of the several States to impose taxes upon national banking associations or their stockholders. *Any assessment not in conformity therewith is unauthorized and invalid.*"

In Heiner v. Colonial Trust Company, 275 U. S. 232, this Court, in holding that Federal lessees of Indian lands, which it had previously held in the Oklahoma cases were exempt from State taxation, were subject to the Federal income tax, said on pages 234-235:

> "The power of the United States to tax the income is undoubted. It seems to us extravagant, in the face of the comprehensive language of the statute, to infer that Congress did not intend to exercise that power merely *because, in the absence of Congressional consent, it is one withheld from the States* or because the tax in terms imposed on others may have some economic effect upon the Indians themselves."

There is no reference whatever in Section 27 to Federal taxation. Direct taxes by the United States are the exception. In fact there have been no such direct ad valorem taxes on property since shortly after the Civil War.

In those instances where the Federal government has permitted States to tax its agencies, it has been careful to express such consent clearly. In permitting State taxation of mineral lessees of Federal lands, it stated:

> "Provided, that nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines or other rights, property or assets of any lessee of the United States." Mid-Northern Oil Company v. Montana, 268 U. S. 45, 48.

In the case of national banks it has permitted certain classes of State taxes, but has in each case specified in detail exactly what taxes may be levied. Section 5219, United States Revised Statutes; United States Code, Title 12, Sec. 548. This Court has consistently stricken down all State taxes that did not come strictly within the permitted classes. In speaking of Sec. 5219, this Court said in Owensboro National Bank v. Owensboro, 173 U. S. 664, 669:

> "This section, then, of the Revised Statutes is the measure of power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. *Any State tax therefore which is in excess of and not in conformity to these requirements is void.*"

In removing the exemption of minerals on Indian lands from State taxation it uses clear and unambiguous terms:

> "All minerals, including oil and gas, produced on or after April 26, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, or from inherited restricted lands of full-blood Indian heirs or devisees of such lands, shall be subject to all State and Federal taxes of every kind and character the same as those pro-

duced from lands owned by other citizens of the State of Oklahoma." 45 Stats. 495, Ch. 517, Sec. 3.

Attention is called to Title 12, Section 548, of the United States Code, which sets forth in minute detail the State taxes that may be levied on national banks. Any tax that does not come within its provisions is invalid.

Statutes relinquishing rights of a State are to be construed strictly in its favor. Although the bankruptcy laws contain broad provisions concerning the discharge of a bankrupt from his liabilities, nevertheless, debts owing to the United States are not discharged as they are not specifically mentioned in the law. United States v. Herron, 20 Wall. (87 U. S.) 251, in which this Court said that the question depended upon the provisions of the Bankrupt Act

> "when properly construed, in view of the settled rule of construction that the sovereign authority of the country is not bound by the words of a statute unless named therein, if the statute tends to restrain or diminish the powers, rights, or interests of the sovereign."

The government is not barred by statutes of limitation, Grand Trunk Western Railway Company v. United States, 252 U. S. 112; Davis v. Corona Oil Company, 265 U. S. 219; nor may it be sued without its express consent, Hill v. United States, 149 U. S. 593. Further illustrations might be furnished indefinitely.

That Section 27 was intended to apply only to State taxation becomes even more apparent when the circumstances surrounding its passage and the end sought by the legislature are considered. It is elementary that a statute will be construed in the light of contemporaneous

events and the situation confronting the legislature when it was passed and the object sought to be accomplished thereby.

> "Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body." Church of the Holy Trinity v. United States, 143 U. S. 457, 463.

> "But courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. Aldridge v. Williams, 3 How. 24; Preston v. Browder, 1 Wheat. 120." United States v. Union Pacific Railroad Company, 91 U. S. 72, 79.

Statutes will always be construed to give effect to the intention of the legislature, and the strict letter of a statute yields to the evident spirit and purpose of the enactment.

> "It thus becomes our duty to endeavor to ascertain what the intention of Congress really was, and in the construction of a statute and in ascertaining its true meaning and application resort may be had not only to the language of the statute, but also to the intention of the legislature. The rule is fundamental that in construing statutes the court should ascertain and give effect to the intention of the legislature." United States v. Tod, 285 Fed. 847, 851.

> "The strict letter of an act must, however, yield to its evident spirit and purpose, when this is necessary to give effect to the intent of Congress." Fleischmann Company v. United States, 270 U. S. 349, 360.

As heretofore pointed out, the first act providing for mineral leases on State lands was that of April 9, 1913 (Laws of 1913, Ch. 173, p. 409, 33rd Leg.), which was repealed and superseded by that of 1917. In the 1913 Act, Section 28 provided:

> "The rights acquired under this act shall be subject to taxation as is other property after the owner shall have paid to the State the sums necessary to perfect his rights."

Section 27 of the 1917 act merely carried this forward in the following language:

> "Rights acquired under this act shall be subject to taxation as is other property."

The immediate cause for the insertion of this provision in the 1913 act was the fact that, when that act was being considered, the State taxing authorities were being forced to litigate the point of whether the interest of an oil and gas lessee was property subject to taxation within the definition of taxable property under the general laws. This litigation is reported in Texas Company v. Daugherty, 160 S. W. 129 (Court of Civil Appeals), 107 Tex. 226 (Supreme Court). When the 1913 act was passed on April 9, 1913, that case was pending in the Court of Civil Appeals, not being decided by that court until July 5, 1913, or by the Supreme Court until May 21, 1915.

At that time and for several years afterward the exact nature of the interest of an oil and gas lessee in the leased premises was very unsettled in Texas. Some contended that, as oil and gas were fugitive substances, the lessor himself had no title to them while in place,

and therefore a lease conveyed to the lessee no title or estate in the land or in the oil but only the right to explore and, if discovered, sever the oil from the land when produced. This is illustrated by the following extracts from the argument of The Texas Company at pages 226-7 of 107 Texas:

> "By their very nature oil and gas are fugitive substances, and the owner of the land having a fee title thereto, has nevertheless no title to the oil and gas in site. * * * Oil and gas do not become private property until reduced to actual possession by one who has that right, and then by the severance of the same it becomes personal property and is not real property. * * * An oil and gas lease, from the very nature of the subject matter, conveys to lessee or grantee no title to estate in the land or in the oil or gas thereunder, but only the right to explore and, if discovered, sever the oil and gas from said land. * * * Each oil and gas lease under review in this suit is a franchise or the grant of a right and privilege to enter upon, explore and produce oil and gas, and is a chattel real. * * * A chattel real or a privilege growing out of real estate, though of ascertainable value, is not subject to taxation unless made so by some legislative act."

It therefore contended that it as lessee had no interest in land or real estate that was taxable under Article 7504, R. S. 1911, defining property subject to taxation as follows:

> "Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in anywise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same."

The legislature was faced with the possibility of the Supreme Court's holding that such leases were not subject to taxation. To remove any danger of this as to leases it proposed to authorize on the State's lands, it expressly provided by Section 28 of the 1913 act that those leases should be taxable. This was the one thought and end the legislature had in view, and to hold that the word "taxation" included Federal taxes is to read into the section a meaning that the legislature never intended.

This is further illustrated by the contemporaneous House Bill No. 812 introduced in the legislature on March 8, 1913. (The journal of the Texas legislature seldom prints bills that are introduced and does not give any report of legislative debates or proceedings before committees. We have therefore had placed in the Record at page 44 a copy of this bill and the committee report, certified by the Secretary of State of Texas, the official custodian of the originals. A copy is inserted in the Appendix to this brief at page 124.) This proposed to amend Article 7504, *supra*, by adding the following:

> "also all leasehold interests whereby the lessee, grantee or licensee is authorized to mine and prospect for and take from lands, stone, granite, marble, fossils, minerals of any kind, including oil and gas."

The end sought was set forth in the emergency clause:

> "Sec. 2. The fact that the right of the State to tax leasehold interests in lands under which the lessee, grantee or licensee is permitted to prospect for and mine or take from said lands minerals, including oil and gas, is being disputed by the owners

of said leasehold interests, and the State is being forced to have litigation with such persons, therefore the necessity to render the law of this State upon said subject beyond cavil or the possibility of a doubt, creates an emergency, etc."

It is clear, therefore, the purpose of Section 28 of the 1913 act was simply to insure beyond cavil or the possibility of a doubt, that the State's lessees would pay State taxes on their leases.

As above stated, Texas Company v. Daugherty was not decided by the Court of Civil Appeals until July 5, 1913, and by the Supreme Court until May 21, 1915. Even then the question was still unsettled, and it was not until the decision on June 30, 1923, in Stephens County v. Mid-Kansas Oil & Gas Company, 113 Tex. 160, that the Supreme Court definitely held that, regardless of the granting clause of a lease, whether it is "grant, bargain, sell and convey," as in the Texas Company case, or "let and lease," as in the Stephens County case, or in any other words, the lessee's leasehold interest is a taxable estate in real property. As the law was still in this unsettled condition when the 1917 Leasing Act was passed, this Section 28 was carried forward as Section 27 to insure that the leases would be subject to State taxes. When it became finally settled by the Stephens County case in 1923 that oil and gas leases were subject to taxation under the general law, this provision was entirely omitted from the Leasing Acts of 1925 and 1929. This later action of the legislature clearly shows it had in mind only State taxation when it inserted Sections 28 and 27, respectively, in the 1913 and 1917 acts. When the end sought by the legislature in enacting those sections had been fully

attained by the decisions in Texas Company v. Daugherty and Stephens County v. Mid-Kansas Oil & Gas Company, it dropped them from the Leasing Acts.

An echo from this prior litigation was heard in this Court in Waggoner Estate v. Wichita County, 273 U. S. 113, in which this Court held that a royalty interest was an interest in real property and taxable in the county where the land was situated, and was not personal property taxable in the county of the taxpayer's domicile.

Even though it might possibly be said that Federal taxation was included in the term "taxation" as used in Section 27, nevertheless as Federal taxation was not within the intention of the legislature, it will not be included within the general term of taxation as used in that section.

> "First, it has been repeatedly decided that 'a thing which is in the letter of a statute is not within the statute unless it be within the intention of the makers.' Dwarris on Statutes, 692; Dac. Abr. Statute, T; 2 Instit. 107, 386." Wilson v. Rousseau, 4 How. 646, 694.

> "It may be admitted that an admiralty case is a civil suit in the general sense of that phrase. But that is not the question before us. It is whether that is the meaning of the phrase as used in this section. The intention of the lawmaker constitutes the law. A thing may be within the letter of a statute and not within its meaning, or within its meaning though not within its letter." Atkins v. The Disintegrating Company, 18 Wall. (85 U. S.), 272, 301.

> "'A thing which is within the letter of the statute is not within the statute, unless it be within the intention of the makers.' 1 Bac. Abr. 247." Leav-

enworth, Lawrence, and Galveston Railroad Company v. United States, 92 U. S. 733, 742.

"The intention of the law-maker constitutes the law: a thing may be within the letter of a statute, and not within its meaning; and within its meaning, though not within its terms." Indianapolis and St. Louis Railroad Company v. Horst, 93 U. S. 291, 300.

"It is a universal rule in the exposition of statutes that the intent of the law, if it can be clearly ascertained, shall prevail over the letter, and this is especially true where the precise words, if construed in their ordinary sense, would lead to manifest injustice." Lionberger v. Rouse, 9 Wall., 76 U. S. 468, 475.

"It is undoubtedly the duty of the court to ascertain the meaning of the legislature, from the words used in the statute, and the subject matter to which it relates; and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it." The Lessee of Brewer v. Blougher, 14 Peters 178, 198.

It is apparent that Section 27 did not refer to taxation by the United States, not only from the fact that Federal taxation is not expressly mentioned in Section 27, but from the circumstances surrounding its original incorporation as Section 28 in the Act of 1913, and the fact that, after the Supreme Court of Texas had settled the proposition that oil leases were taxable as property, this section was omitted in the 1925 and 1929 Leasing Acts. Even though Federal taxation might be included in the term "taxation" if construed broadly, neverthe-

less it will not be so construed where it was evidently not the purpose of the legislature to deal with Federal taxation, and even though Federal taxes might be within the letter, it will not be included within the statute as it was not within the intention of the legislature. To construe this section otherwise would extend it to a class of taxes that the legislature never designed to embrace within it. Such construction would furthermore be inequitable and unjust to lessees under the 1917 act as compared to lessees under the 1925 and 1929 acts, as the latter would not be subject to Federal taxes as their acts do not include Section 27.

The Circuit Court of Appeals based its construction of Section 27 on Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, stating that Section 27 was no broader than the provision in that case subjecting Indian lands to State taxation. For comparison we set the two sections out as follows:

| SECTION 27 OF TEXAS ACT. | SECTION 4 OF FEDERAL ACT. |
|---|---|
| "Rights acquired under this act shall be subject to taxation as is other property." | "All land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes." |

The opinion of this Court in that case reviews the circumstances surrounding its passage and points out that Congress intended this Section 4 to relate to State taxation as part of an established program of gradually

converting the Indians into an independent and self-reliant people by granting them the priviliges of citizens and at the same time developing their sense of responsibility by placing on them the burdens of citizenship. As this Court said in that opinion:

> "In this (that is, the Act of 1908), as in other Indian legislation, opportunity is afforded for their emancipation by imposing upon them duties as well as giving them the privileges of citizens and property owners, including the duty to pay taxes." (Page 580.)
>
> "To hold them immune would be inconsistent with one of the very purposes of their creation, to educate the Indians in responsibility, and would present the curious paradox that the Secretary by a mere conveyancer's restriction, permitted by Congress, had rendered the land free from taxation and thus actually relieved the Indians of all responsibility."

Furthermore, the provision of Section 4 was inserted at the request of Oklahoma for the specific purpose of allowing it to tax these lands, as was pointed out at page 581:

> "This section was adopted in response to representations that the revenue of the State of Oklahoma was insufficient for State purposes, that large areas of lands within the State allotted to Indians were exempt from taxation as agencies of the Federal Government and that Indian citizens were enjoying the benefit of local government without taxation."

The end sought by Congress in enacting Section 4 was to make these Indian lands expressly subject to State taxation. The end sought by Texas in enacting Section 27 was to insure the leases being subject to taxation by the State and its subdivisions with no thought

as to Federal taxation. Therefore that case does not support the Circuit Court of Appeals in its construction of Section 27.

The mere fact that the leases are subject to State taxation does not take away their exemption from Federal taxation. The Texas statutes, Article 7147, R. S. 1925, provide that "bonds" and "all public stock and securities" shall be subject to taxation, but the Federal government may not tax the income therefrom. Pollock v. Farmers Loan & Trust Company, 157 U. S. 429. The Federal income tax law applies to Federal employees, but this does not allow a State to tax them.

If the Circuit Court of Appeals were correct, this anomalous result would follow: If three lessees held leases on three adjoining tracts of University land, one under the 1917 act, one under the 1925 Act and the other under the 1929 Act, the 1917 lessee would pay the Federal taxes but the other two would not, as their acts do not contain Section 27 of the 1917 act. It is upon that section the Circuit Court of Appeals sustained these taxes. The legislature never intended such an unequal burden of taxation to be placed on the State's lessees.

It is submitted, therefore, that Section 27 referred solely to taxation by the State of Texas and its subdivisions, and the Circuit Court of Appeals erred in construing it as authorizing the collection of these Federal income taxes.

## IV.

**Section 27 of the 1917 Act was repealed as to these leases on March 10, 1925, before the taxes involved in this cause were levied or became due and payable.**

The first taxes sued for were paid for the fiscal year ending June 30, 1925. (R. 2-3.) The income tax return for that year was not due to be filed until September 15, 1925. Section 227 (a) of the Revenue Acts of 1924 and 1926. The 1925 Leasing Act was approved and became effective on March 10, 1925.

The 1917 act dealt with University lands and all other lands of the State. The 1925 act dealt solely with University lands and as to such lands repealed the 1917 act. Theisen v. Robison, 117 Tex. 489, 512. As the taxability of oil leases had been settled in 1923 in Stephens County v. Mid-Kansas Oil & Gas Co., *supra*, there was no necessity for carrying forward Section 27. Accordingly neither the 1925 Act nor that of 1929 contained such a clause.

It is well settled that, where a statute covers the entire subject-matter involved in a prior statute, the later statute repeals the former. This rule is so well established that authorities need hardly be cited.

In Tracy v. Tuffly, 134 U. S. 206, the court said at page 223:

> "And while it is true that repeals by implication are not favored by the courts, it is settled that, without express words of repeal, a previous statute will be held to be modified by a subsequent one, if the latter was plainly intended to cover the whole subject embraced by both, and to prescribe the only rules in respect to that subject that are to govern. United States v. Tynen, 11 Wall. 88, 95; Cook County National Bank v. United States, 107 U. S. 445, 451."

See also King v. Cornell, 106 U. S. 395; The Paquete Habana, 175 U. S. 677, 685.

In St. Louis & Southwestern Railway Company v. J. A. Kay Company, 85 Tex. 558, the court said at page 560:

> "In Rogers v. Watrous (8 Tex. 62), *supra*, Judge Wheeler says: 'A subsequent statute revising the subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplied. So, though a subsequent statute be not repugnant in its provisions to a former one, yet if it was clearly intended to prescribe the only rules which should govern, it repeals the prior statute.' "

The 1925 act covered the entire subject of oil and gas leases on University lands, and thereafter all such leases were granted subject to its provisions and not those of the 1917 act. It is true such repeal could not affect the rights granted by the State to lessees under prior acts, and the 1925 act did not attempt to cancel such leases. However, it did repeal the provision of Section 27 dealing with taxation. There was no reason for a special provision like Section 27 to remain applicable to 1917 leases for State taxation purposes, while 1925 leases were subject to State taxes only under the general taxing laws.

Furthermore, as heretofore pointed out, if Section 27 has the effect attributed to it by the Circuit Court of Appeals, lessees holding under the 1917 act would be subject to the Federal income taxes while those under the 1925 and 1929 acts would not. The legislature never intended such a manifestly unequal burden of taxation to result. It would be contrary to the general policy of all governments that taxes shall be equal and uniform,

and would violate the express provision of Article VIII, Section 1, of the Texas Constitution, that

"Taxation shall be equal and uniform."

Even if Section 27 could possibly be construed as a grant by the State of permission to the Federal government to tax its lessees, the legislature clearly evidenced its intention to withdraw such permission by entirely omitting it in the 1925 and 1929 acts.

As Section 27 was repealed as to leases on University lands on March 10, 1925, it was not in effect during the time for which these taxes were levied, and the court in sustaining these taxes under Section 27 was in error.

**Conclusion.**

The constitutional exemption claimed by petitioner has been recognized in innumerable decisions of this Court since M'Culloch v. Maryland. It has been particularly emphasized in recent years. In addition to the cases involving lessees of Indian lands, this Court has invoked the principle in striking down State taxes and regulations in Johnson v. Maryland, 254 U. S. 51, First National Bank v. Adams, 258 U. S. 362, First National Bank v. California, 262 U. S. 366, Childers v. Beaver, 270 U. S. 555, Miller v. Milwaukee, 272 U. S. 713, Northwestern Mutual Life Insurance Company v. Wisconsin, 275 U. S. 136, Long v. Rockwood, 277 U. S. 142, Panhandle Oil Company v. Knox, 277 U. S. 218, and Graysburg Oil Company v. Texas, 278 U. S. 582, and a provision of the United States Revenue Act of 1921 in National Life Insurance Company v. United States, 277 U. S. 508. This Court particularly stressed the imperative necessity of

this constitutional principle in The Macallen Company v. Massachusetts, 279 U. S. 620. It has become such an integral part of the Constitution that it cannot be changed except by an amendment to the Constitution itself.

We submit that this case is in principle identical with that of Gillespie v. Oklahoma, 257 U. S. 501, and that the words of this Court in that case

> "'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them.' 240 U. S. 530. The step from this to the invalidity of the tax upon income from the leases is not long,"

are strictly applicable to the leases of petitioner and its income therefrom.

It is respectfully prayed that the judgment of the Circuit Court of Appeals be reversed and that of the District Court affirmed.

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# APPENDIX A

## Resolutions Resulting in Annexation of Texas.

The following is a copy of the joint resolution of the Congress of the United States, 5 Stats. 797:

No. 8. Joint Resolution for annexing Texas to the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. And be it further resolved, That *the foregoing consent of Congress is given upon the following conditions, and with the following guarantees,* to wit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the Constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. Second: *Said State,* when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, arm-

aments, and all other property and means pertaining to the public defense belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and *shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct;* but in no event are said debts and liabilities to become a charge upon the Government of the United States. Third, New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude (except for crime), shall be prohibited.

3. And be it further resolved, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

APPROVED, March 1, 1845.

* * * * * * *

After the adoption of this resolution, the Congress of the Republic of Texas adopted the following resolution set forth in 2 Gammel's Laws of Texas, page 1200.

**Joint Resolution.**

Giving the consent of the existing Government to the annexation of Texas to the United States.

Whereas, the Government of the United States hath proposed the following terms, guarantees, and conditions, on which the People and Territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress as-

sembled, That Congress doth consent that the Territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State, to be called the State of Texas, with a Republican form of Government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing Government, in order that the same may be admitted as one of the States of this Union.

"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit:

"First. Said State to be formed subject to the adjustment by this Government of all questions of boundary that may arise with other Governments, and the Constitution thereof, with the proper evidence of its adoption, by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six.

"Second. Said State when admitted into the Union after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after

discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States.

"THIRD. New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery or involuntary servitude except for crime shall be prohibited."

And whereas, by said terms, the consent of the existing government of Texas is required—Therefore,

Be it resolved by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Government of Texas doth consent, that the People and Territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a Republican form of Government, to be adopted by the people of said Republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union, and *said consent is given on the terms, guarantees and conditions set forth in the Preamble to this Joint Resolution.*

SEC. 2. Be it further resolved, That, the Proclama-

tion of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to set in Convention, at Austin on the fourth day of July next for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Texas.

SEC. 3. Be it further resolved, That, the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

JOHN M. LEWIS,
Speaker of the House of Representatives
K. L. ANDERSON,
President of the Senate.

Approved, June 23, 1845.

ANSON JONES.

Thereafter the Convention of the People of the Republic of Texas adopted a similar resolution on July 4, 1845. This resolution is practically identical with the foregoing and is not here copied. It may be found in 2 Gammel's Laws of Texas, page 1228.

* * * * * * *

After these resolutions had been adopted, the Congress of the United States adopted the following resolution formally admitting Texas into the Union, which resolution is set forth in 9 United States Statutes at Large, page 108.

(No. 1.)—Joint Resolution for the Admission of the State of Texas into the Union.

Whereas the Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfuly belonging to, the Republic of Texas, might be erected into a new State, to be called THE STATE OF TEXAS, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the States of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution; and whereas the people of the said Republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a Constitution, and erect a new State with a republican form of government, and, in the name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guaranties contained in said first and second sections of said resolution; and whereas the said Constitution, with the proper evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said joint resolution:

Therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Texas shall be one, and is hereby declared to be one, of the United States of America,

and admitted into the Union on an equal footing with the original States in all respects whatever.

SECTION 2. And be it further resolved, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two representatives.

APPROVED December 29, 1845.

# APPENDIX B

## Sections 10, 11, 12, 13, 14 and 15 of Article VII of the Constitution of the State of Texas, Pertaining to the University of Texas.

SEC. 10. The legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas," for the promotion of literature, and the arts and sciences, including an agricultural and mechanical department.

SEC. 11. In order to enable the legislature to perform the duties set forth in the foregoing section, it is hereby declared that all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the State (together with such sum belonging to the fund, as may now be in the treasury), shall be invested in bonds of the State of Texas, if the same can be obtained; if not, then in United States bonds; and the interest accruing thereon shall be subject to appropriation by the legislature to accomplish the purpose declared in the foregoing section; provided, that the one-tenth of the alternate sections of the lands granted to railroads, reserved by the State which were set apart and appropriated to the establishment of the

University of Texas, by an Act of the Legislature of February 11, 1858, entitled "An Act to establish 'the University of Texas'," shall not be included in, or constitute a part of, the permanent university fund.

SEC. 12. The land herein set apart to the university fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

SEC. 13. The Agricultural and Mechanical College of Texas, established by an Act of the Legislature, passed April 17, 1871, located in the County of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts, and the natural sciences connected therewith. And the legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements and for providing the furniture necessary to put said college in immediate and successful operation.

SEC. 14. The legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the State, to be located by a vote of the people; provided, that no tax shall be levied, and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

SEC. 15. In addition to the lands heretofore granted

to the University of Texas, there is hereby set apart and appropriated for the endowment, maintenance, and support of said university and its branches, one million acres of the unappropriated public domain of the State; to be designated and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent university fund, and the legislature shall not have the power to grant any relief to the purchasers of said lands.

# APPENDIX C

**Act of March 16, 1917—35th Legislature, P. 158.**

**Chapter 83.**

*An Act to Amend Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, relating to the prospecting for and the development of the minerals and other substances in the public land, public islands and public waters and river beds and channels owned by the State, and in the unsold land belonging to the public free school fund, the University fund and the several asylums fund and in such of said land as has heretofore been sold or may hereafter be sold with the reservation of the minerals and other substances therein to the fund to which the land belongs; providing the royalty and other sums and compensation to be paid to the State and owners of the surface, and appropriating the proceeds to certain funds; providing for ingress and egress; providing one may pay cash for mineral claims, and obtain patents and change former claims to rights under this Act; providing for the adoption of rules and regulations by the Commissioner of the General Land Office, repealing the remaining portion of this said Chapter 173 which may not be amended and all other statutes in conflict with this Act, and declaring an emergency.*

*Be It Enacted By the Legislature of the State of Texas:*

SECTION 1. All of Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, shall be so amended as to hereafter read as follows:

SECTION 1. All public school, University and Asylum land and other public lands, fresh water lakes, river beds and channels, islands, bays, marshes, reefs and salt water lakes belonging to the State and all lands which may hereafter be so owned and all of said lands which have heretofore been sold or disposed of

by the State or by its authority with a reservation of minerals or mineral rights therein as well as all lands which may hereafter be sold with the reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to the prospecting for and the development of the minerals and substances known as gold, silver, cinnebar, lead, tin, copper, zinc, platinum, radio-active minerals, tungsten, ores of aluminum, coal, lignite, iron ore, kaolin fire clays, barite, marble, petroleum, natural gas, gypsum, nitrates, asbestos, marls, salt, onyx, turquoise, mica, guano, bismuth and bismuth bearing minerals, asphalt, potash compounds, sulphur, graphite, magnesia, fuller's earth, molybdenum and molybdenum bearing minerals upon the terms and conditions provided in this Act.

SECTION 2. Any person or association of persons, corporate or otherwise, being a citizen of the United States or having declared an intention of becoming such, desiring to obtain the right to prospect for and develop the minerals and substances named above that may be in any of the areas included herein may do so under the provisions of this Act together with such rules and regulations as may be adopted by the Commissioner of the General Land Office relative thereto and necessary for the execution of the purposes of this Act.

SECTION 3. One desiring to obtain the right to prospect for and develop petroleum oil and natural gas that may be in any of the surveyed areas included herein shall file with the County Clerk an application in writing giving a designation of same sufficient to identify it. The county clerk shall, upon receipt of

one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections or that equivalent eligible to be embraced in one permit such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum.

SECTION 4. One desiring to obtain the right to prospect for and develop petroleum and natural gas in any of the State's unsurveyed areas named in this Act shall file with the county surveyor an application in writing for each area applied for, giving a designation of same sufficient to identify it, but such area shall not exceed 2560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application.

SECTION 5. When the Commissioner receives an application that was filed with the County Clerk or an application that was filed with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for and a sworn statement by the applicant showing what interest he has in other permit, lease or patent issued under this Act and in good standing, he shall file same, and if upon examination the application or the application and field notes are found correct and the area applied for is within the provisions of this Act the Commission shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop

petroleum and natural gas within the designated area for a term not to exceed two years.

SECTION 6. Before the expiration of six months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area and if petroleum or natural gas is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of one year from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the first six months aforesaid and that a bona fide effort to develop the said area was made during the six months preceding the filing of the statement and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file the statement herein provided for within the time specified or the filing of a statement untrue or false in material matters shall subject the permit to forfeiture and the termination of the rights of the owner. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided, such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor.

SECTION 7. If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall file in the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the

area included in the permit upon the following conditions:

1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum or natural gas in commercial quantities.

2. Upon the payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease, and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe line receipts, tank receipts, gauge of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe lines or tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertain-

ing to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

4. The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

SECTION 8. In the event the surface of an area included within the operations of this Act has heretofore been or may hereafter be acquired by one prior to the filing of an application under the provisions herein such area shall nevertheless be subject to prospect and lease as provided herein but the owner of the permit or lease shall pay to the owner of the surface annually in advance during the life of the permit or lease, ten cents per acre and the sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface.

SECTION 9. Every person or association of persons, corporate or otherwise, applying for a permit, lease or patent shall file with the application a sworn statement showing what interest the applicant has in any other

permit or lease issued by the State and in good standing at the date of the statement.

### Coal and Lignite.

(Sections 10-11-12-13-14 and 15 deal solely with the development of minerals other than oil and gas and these sections are not here copied.)

### General Provisions.

SECTION 16. The general provisions in this and the following section shall apply to all the foregoing provisions so far as applicable.

Surveyed land within the meaning of this Act shall include all tracts for which there are approved field notes on file in the General Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this Act include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated or with the clerk of the county to which such county may be attached for judicial purposes and accompanied by one dollar filing fee, and it shall be filed in the General Land Office within thirty days after it was filed with the county clerk and accompanied by one dollar filing fee.

All applications for unsurveyed areas shall be filed with the county surveyor, or his deputy, of the county in which the area or a part thereof is situated, accompanied by one dollar filing fee, but if such county has no surveyor then the application shall be filed with the

clerk of the proper county and by him recorded in the surveyor's records, and in that event the area may be surveyed by the surveyor of the nearest county as now provided by law. The area shall be surveyed within ninety days and the application, field notes and plat shall be filed in the General Land Office, accompanied by a filing fee of one dollar, within one hundred days after the date of the filing of the application.

The payment per acre required to be made before the issuance of a permit shall be paid annually thereafter during the life of the permit or lease.

A separate written application shall be made for the area desired in a permit. No permit, lease or patent shall embrace the area in two or more applications.

No application, permit, lease or patent shall embrace a divided area.

Whole tracts of surveyed land may be applied for as a whole or in eighty-acre tracts or multiples thereof without furnishing field notes therefor.

A duplicate of every permit and lease shall be kept in the General Land Office.

The area in each permit shall be developed independently of other areas.

When one desires a lease or patent any one or more whole tracts in the permit may be abandoned by relinquishment filed in the General Land Office as herein provided and thereupon obtain a lease or patent upon the remaining area; provided such remaining area is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the General Land Office accompanied by one dollar filing

fee. The Commissioner of the General Land Office shall mail notice to the proper County Clerk of the filing of the relinquishment and when said notice has had time through due course of mail to reach said clerk the area shall be subject to applications as in the first instance.

SECTION 17. The proceeds arising from activities under this Act which affects land belonging to the public free school fund, the permanent University fund and the permanent fund of the several asylums shall be credited to the permanent fund of said institutions and the proceeds arising from the activities affecting other areas shall be credited to the Game, Fish and Oyster Fund.

SECTION 18. The owner of a file or permit or lease under any provision of this Act may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated or in the county to which such county may be attached for judicial purposes and same shall be filed in the General Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar, and if not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable; provided further, a sublease contract need not be filed in the General Land Office.

SECTION 19. If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to

the development of the area within the time required, or should the owner of a permit fail or refuse to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or should the owner of a permit fail or refuse to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to proceed in good faith and with reasonable diligence and in a bona fide effort to develop, operate and put out the mineral or other substance at any time during the life of the lease, or should the owner of a lease fail or refuse to make proper remittance in payment of royalty or other payments or fail or refuse to make the proper statement, or fail to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do the permit or lease, as the case may be, shall be subject to forfeiture, and when the Commissioner is sufficiently informed of the facts which subject the permit or lease to forfeiture he may declare same forfeited by proper entry upon the duplicate permit or lease kept in the General Land Office. When forfeiture has been declared a notice of that fact shall be mailed to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells, and provided further, that all forfeitures may, within the discretion of the Commissioner be set aside and all rights reinstated before the rights of another intervene.

SECTION 20. An owner of any claim for any mineral or substance included in this Act may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this Act, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress, to and and from the area embraced in the file, permit, lease or patent. Ten cents per acre shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent.

SECTION 21. Neither the filing of an application under any provision of this Act nor the issuance of a permit or lease on any of the unsold land included herein shall prevent the sale of the surface without the minerals and in case of such sale subsequent to the posting of any notice or the filing of an application the purchaser shall not be entitled to the ten cents per acre that is provided for owners of the surface at the time of filing nor shall such owner be entitled to any damages that may be occasioned by the working of any area.

SECTION 22. All development in water or on islands, marshes, reefs or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner of the General Land Office may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution.

The Commissioner of the General Land Office, may cancel a claim, location, file, permit or lease or patent for a failure or refusal of the owner to comply with such rules and regulations as may be adopted.

SECTION 23. Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked for the minerals and substances embraced in such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such mineral or other substance by complying with the provisions of this Act relating to the mineral or substance so discovered, but shall not be required to pay either of the additional ten cents per acre to the State or the owner of the surface, and the remaining portion of said area shall be subject to the application of others in the same manner as if there were no pre-existing file thereon.

SECTION 24. If the owner of a claim upon any mineral or other substance named in this Act, other than petroleum and natural gas which has been acquired under any previous statute, should desire to accept the provisions of this Act and operate hereunder he may do so by filing a declaration to that effect in the General Land Office together with the payment required in the particular instance and obtain a permit or lease by complying with the provisions hereof relating thereto. The rights under such acceptance shall begin from the date the declaration is filed and the owner shall have the same rights thereafter as is accorded those who make original filings under this Act.

SECTION 25. At any time during the life of a permit

but prior to accepting a lease upon any area for any mineral or other substance included within the provisions of this Act, except petroleum and natural gas, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain under the rules governing the issuance of patents to land, a patent for all the minerals that may be in such area except petroleum and natural gas in lieu of the payment of the royalty as provided in this Act; provided, however, one shall pay the prescribed royalty on all minerals and substances put out and disposed of while developing the area prior to obtaining a lease or patent.

SECTION 26. The Commissioner of the General Land Office shall have the general supervision of all matters necessary for the proper administration of this Act and he is authorized to adopt rules and regulations and to alter or amend them from time to time as he may deem necessary for the protection of the interests involved and not inconsistent with the provisions herein.

SECTION 27. Rights acquired under this Act shall be subject to taxation as is other property.

SECTION 28. Chapter 173 approved April 9, 1913, and all other laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 29. The fact that portions of the mineral statute are so incongruous and difficult of interpretation as to be almost inoperative and the fact that a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed and the near approach to the close of the session creates an emergency and an imperative public necessity exists that the constitutional rule which requires bills to be

read on three several days in each house be suspended and that this take effect from and after its passage and it is so enacted.

APPROVED March 16, 1917.

# APPENDIX D

ACT OF MARCH 10, 1925, CHAPTER 71, PAGE 225, REGULAR SESSION, 39TH LEGISLATURE

*An Act for the sale of oil and gas leases on university land and to provide for the extension of the time for the expiration of oil and gas permits heretofore issued on university land and the issuance of leases thereon without the payment of any further sum except royalty, and declaring an emergency.*

*Be It Enacted By the Legislature of the State of Texas:*

SECTION 1. That all university land now unsold and all of said land that has heretofore been sold with reservation of the minerals therein and that which may hereafter be sold with reservation of the minerals therein, whether known or unknown, shall be included in this Act and leases thereon conferring upon persons, firms and corporations the right to develop the oil and natural gas that may be in said land shall be subject to sale by the Commissioner of the General Land Office in accordance with the provisions of this Act and under such rules and regulations as may be adopted by said commissioner as may be necessary to the proper execution of its purposes; provided, oil and gas permits and leases outstanding shall not be affected by this Act except as provided in Section 14 hereof.

SEC. 2. Sales of oil and gas leases on the lands included herein shall be made by the Commissioner of the General Land Office not less than once each month, when there is land in demand, and at 10 o'clock A. M. on the day fixed therefor. Sales of leases shall be for ten cents per acre in advance for the first year and twenty-five cents per acre in advance for the second year and fifty cents per acre in advance each year there-

after until production is secured in paying quantities, but not to exceed five years, and a royalty of one-eighth of the gross production of the oil, or the value thereof, produced and saved from the leased premises delivered into such pipe line as the lessee may connect his well, or wells, and one-eighth of the gross production of gas, or the value thereof, produced and sold off the leased premises and in addition thereto such sum, if any, that one may pay therefor as provided herein.

SEC. 3. The commissioner shall advertise the land and the time when the mineral lease will be subject to sale, except as elsewhere provided in the event of tie bids. If there should be no other sufficient means for giving the necessary publicity as to what tracts will be subject to lease and the time when applications may be delivered to the General Land Office, the Commissioner shall have lists of such tracts printed for free distribution at the expense of the State, which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the tracts subject to lease and the terms upon which they may be leased and the time when applications therefor will be opened and filed in the General Land Office.

SEC. 4. Separate applications for each tract with one dollar for county clerk recording fee, and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any tract shall be delivered into the General Land Office on or before the day and hour on which the lease will be subject to sale in sealed envelopes on which shall be endorsed in substance "Application to Buy Oil and Gas," and in addition thereto the time the lease will be subject to sale. All envelopes so endorsed shall be securely kept by the

Commissioner or his chief clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour, whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land Office. An application which includes two or more tracts or is for a price less than the fixed royalty and ten cents per acre shall be void. When an application shall have been filed and considered and the land found to be subject to lease, the lease shall be issued for a term not to exceed five years to the applicant that pays the most, if any sum, for the area in addition to the ten cents per acre and the stipulated royalty. If production should not be secured in five years the lease shall terminate and another lease on the land again be subject to sale as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. All leases shall be forwarded by the Commissioner, with one dollar recording fee, to the proper county clerk, who shall record same and deliver the lease to the lessor or his agent. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the Commissioner, but not more than fifteen days after rejection, when a lease on the land will be subject to sale as in the first instance; provided no lease shall be sold for a sum less than the tie bid without the tract having been duly advertised and offered for sale on a regular sale date. All sums paid upon rejected applications shall be returned by the State Treasurer.

SEC. 5. Whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental. After production is secured in paying quantities, the owner shall be entitled to an absolute lease which shall run so long as the area produces in paying quantities, subject only to the provisions of this Act. Whenever a lease ceases to produce in paying quantities or the owner fails to pay to the State the royalty due, it shall be subject to forfeiture by the Commissioner, and when sufficiently informed of the facts which authorize a forfeiture he shall forfeit it and the area shall be again offered for sale as in the first instance.

SEC. 6. Royalty of one-eighth of the gross production, as herein provided, shall be paid to the General Land Office for the benefit of the University permanent fund on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land

Office, the Attorney General, the Governor or member of the Board of Regents of the University of Texas, or the representative of either.

SEC. 7. Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the permanent University fund with all amounts received from royalty. All payments shall be in the form of cash, bank draft on some State or National bank in Texas, or post office or express money order, or such other forms as may be collectible in Austin.

SEC. 8. The State shall have a first lien upon all oil and gas produced upon any leased area to secure the payment of all unpaid royalty and other sum or sums of money that may be due and become due under the provisions of this Act and may follow the same and the value thereof into the hands of any purchaser.

SEC. 9. If oil or gas should be produced in commercial quantities in a well on an adjoining area whether privately owned, or covered by separate lease, which well should be within five hundred feet of an area leased under this Act, the owner of the lease on such University area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the actual drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and under such conditions as may be necessary to prevent the undue drainage of oil and gas beneath such University area. A log of such well, whether producer or non-producer, shall be filed in the General Land Office

within thirty days after the well has been completed or abandoned.

SEC. 10. One may transfer his lease at any time or a part thereof in any size tract not less than forty acres and such transfer shall be recorded in the county or counties in which the area or part thereof is situated and the recorded transfer or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee and ten cents per acre for each acre in the transfer and thereby the assignee shall have his portion separated from the other part and succeed to all the rights and be subject to all the obligations and penalties of the original lessee. The ten cents per acre as a transfer fee shall be deposited into the State Treasury to the credit of the available University fund, and the lease rental and the bonus paid by a purchaser shall be deposited in the State Treasury to the credit of the University permanent fund.

SEC. 11. An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated and the recorded relinquishment or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. The area so relinquished shall be subject to lease as in the first instance.

SEC. 12. If the owner of a lease should fail or refuse to make the payment of any sum due thereon either as rental or royalty on the production within thirty days

after same shall become due, or if such owner or his authorized agent should make any false return, or false report concerning production, royalty or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act, or if such owner or his agent should refuse the proper authority access to the records or other data pertaining to the operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorized a forfeiture, the Commissioner shall forfeit same, and the area shall be subject to lease again after due advertisement; provided such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene; upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions.

SEC. 13. Whenever it may be necessary for the owner of a lease to enter the enclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner of enclosure or agent of the owner cannof agree upon the terms or place of entry, the lessee or his agent may petition the Commissioners Court of the county or counties in which such enclosure may be situated in whole or in part for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said court or courts to

proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein.

SEC. 14. All oil and gas permits heretofore issued upon lands included herein and now in force shall be extended for a term of five years from date thereof and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual money rental. After production is secured in paying quantities the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act.

SEC. 15. The importance of this proposed legislation and the near approach of the close of this session creates an emergency and an imperative public necessity that the rule requiring bills to be read on three separate days in each House be suspended, and that this Act be placed upon its third reading and final passage and take effect from and after its final passage, and it is so enacted.

(NOTE: The enrolled bill shows that the foregoing Act passed the House, 102 yeas, 5 nays; passed the Senate, 27 yeas, 0 nays.)

Approved March 10, 1925.

Effective March 10, 1925.

# APPENDIX E

**Act of March 31, 1927, 40th Legislature, Page 368**

**Chapter 249.**

WHEREAS, there are now pending in the Supreme Court of Texas two petitions for mandamus against J. T. Robison, Commissioner of the General Land Office in which Geo. W. Theisen and S. Rosa Frank as Relators are seeking to compel the said Commissioner to issue to each an oil and gas permit for the development of those substances under their applications heretofore filed on University land at ten cents per acre and one-eighth royalty under the Act of March 16, 1917, for the alleged reason the Act of March 10, 1925, providing for the sale of oil and gas leases on University land is unconstitutional, and

WHEREAS, the Regents of the University have joined in the attack upon the 1925 Act and if the effort to destroy said Act should be successful and resort have to be had to the Act of 1917 for the development of oil and gas on University land the estimated loss to the University fund amounts to a few million dollars, now, therefore

S. B. No. 474.

*An Act to withdraw from sale the oil and gas in University land until such time as the Legislature may enact laws deemed adequate to protect the interest of the University in its available and permanent funds, on the condition only that the University mineral lease or sales Act of March* 10, 1925, *Chapter* 71, *Acts of Regular Session, 39th Legislature, shall be held invalid or ineffective by the Supreme Court of Texas in suits now pending or that may hereafter be filed; and in that event prohibiting the Commissioner of the General Land Office from issuing any oil and gas per-*

*mit upon any application heretofore or hereafter filed, and declaring an emergency.*

*Be It Enacted by the Legislature of the State of Texas:*

SECTION 1. If, in cases now pending in the Supreme Court or in cases hereafter filed, the said court should decide that the mineral lease or sales Act of March 10, 1925, Chapter 71, Acts Regular Session, 39th Legislature, is invalid or ineffective, then and in that event the minerals in all University land are hereby withdrawn from lease or sale until such time as the Legislature may enact legislation deemed adequate for the protection of the University available and permanent funds; and the Commissioner of the General Land Office shall not, in the event such sales Act is declared unconstitutional, thereafter issue any oil and gas permits on said land upon any application heretofore or hereafter filed, until further legislation as to same.

SEC. 2. The manifest importance of this legislation and the crowded condition of the calendar, creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three separate days in each House be suspended and that this be placed upon its third reading and final passage and take effect from and after passage, and it is so enacted.

Approved March 31, 1927.

Effective March 31, 1927.

# APPENDIX F

**Act of January 11, 1929, 41st Legislature, Page 6.**
**Chapter 2.**

S. B. No. 7.

*An Act repealing Chapter 71 of the Acts of the Regular Session of the Thirty-ninth Legislature. Further providing for a withdrawal from lease or sale of all oil and gas in University lands until such time the legislature may enact laws deemed adequate for the protection of the University fund, especially withdrawing from sale or lease oil and gas in University lands advertised for sale for January 2, 1929, as well as for later times during the month of January, and further requiring the Commissioner not to consider any of the applications filed for lease or purchase of such oil and gas so advertised, and further requiring him to forthwith return the applications so filed, together with remittances made therein and declaring an emergency.*

*Be It Enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter seventy-one (71) of the Acts of the Thirty-ninth Legislature is hereby in all things repealed, and all oil and gas in University lands is hereby withdrawn from lease or sale until such time as the legislature may enact laws deemed adequate for the protection of the University funds, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 2. Oil and gas in University lands advertised

for sale for January 2, 1929, the date of sale of which was afterwards postponed to January 22, 1929, is specifically withdrawn from sale or lease, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 3. Oil and gas in University lands advertised for sale for January 2, 1929, the sale of which was not postponed, is also specifically withdrawn from sale, or lease, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 4. Oil and gas in University lands advertised for sale for the various days in January, 1929, beginning with January 16th, and other days subsequent thereto in January, is also specifically withdrawn from sale, and it is hereby declared to be the duty of the Land Commissioner not to consider applications filed for the purchase or lease of such oil and gas, but upon the contrary it shall be his duty to return all such applications, together with remittances made to the applicants without making any record of the terms offered.

SEC. 4-a. If any provision or Section of this Act be declared invalid or unconstitutional the same shall not

affect any other portion or provision thereof, and all other provisions shall remain valid and unaffected by any invalid provision, if any.

SEC. 5. The necessity for the immediate protection of the University funds creates an emergency and an imperative public necessity that the rule requiring bills to be read on three several days be suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

(NOTE—S. B. No. 7 passed the Senate, 27 yeas, 0 nays; passed the House, 119 yeas, 0 nays.)

Approved January 11, 1929.

Effective January 11, 1929.

# APPENDIX G

**Act of March 29, 1929, 41st Legislature, Page 616.**
**Chapter 282.**

S. B. No. 82.

*An Act to provide for the sale of oil and gas in and on University lands; to create a Board to perform the duties with reference thereto provided hereby; to provide for surveying, dividing and marking of said lands; prescribing duties of the Board of Regents of the University of Texas and of the Commissioner of the General Land Office of the State of Texas, authorizing the employment of geologists and mineralogist, and other employees, and making an appropriation, and repealing all laws in conflict herewith, and declaring an emergency.*

*Be It Enacted by the Legislature of the State of Texas:*

SECTION 1. A Board is hereby created to consist of the Commissioner of the General Land Office and two members of the Board of Regents of the University of Texas, neither of whom is employed either directly or indirectly by any oil or gas company, nor is an officer or attorney thereof, to be selected by said Board of Regents, who shall perform the duties hereinafter indicated; the Board shall be known as "Board for Lease of University Lands." The term "Board" wherever it appears hereafter in this Act shall mean "Board for Lease of University Lands." The Board shall keep a complete public record of all its proceedings.

SEC. 2. It is hereby made the duty of the Board to cause to be done such surveying or re-surveying of the blocks and subdivisions thereof of the University lands as may be necessary to enable the lines of the blocks and sections and fractional sections to be determined

and identified and have such corners as may be necessary to that end permanently marked. When it is impracticable to establish such lines and corners as originally surveyed, or when such sections have not been actually surveyed on the ground, the blocks shall be surveyed or re-surveyed and divided into surveys of sections and fractional sections and as many corners thereof as may be necessary for the identification shall be permanently marked. The surveyors employed to do such surveying shall be approved by said Board. The field notes of such surveys shall be returned to the General Land Office, and when correct and in accordance with law, shall be approved by the Commissioner, filed in the General Land Office and become archives therein.

SEC. 3. The oil and gas in the University land shall be subject to sale on and after June 1, 1929, under the regulations, at the times and on the terms provided herein, together with such rules and regulations as may be authorized herein to be adopted by the Board, but not inconsistent with the provisions of this Act.

SEC. 4. Whenever there shall be such demand for the purchase of the oil and gas in any one or more separate whole surveys of sections or fractional sections of University land as will reasonably insure that said oil and gas may be sold advantageously, the Board shall place said oil and gas in said lands on the market in separate whole surveys only or in subdivisions of said surveys. It shall cause to be advertised a brief description of the lands from which the oil and gas is proposed to be sold and that sealed bids for the purchase of said oil and gas by lease will be opened at a designated day, at ten o'clock A. M. on that day, and that sealed bids

received up to that time will be considered. Said advertisement shall be made:

(*a*) By insertion in two or more papers of general circulation in this State.

(*b*) By mailing a copy thereof to the County Clerk and County Judge of every county in this State.

(*c*) In addition to the two foregoing mandatory provisions, the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State and to be mailed generally to such persons as they think might be interested.

SEC. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids and upon that day the said Board, or a majority of its members shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or sub division thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than ten cents per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

SEC. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per

acre for delay in drilling of the land bid for, which amount will constitute the first year rental payment for delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment herein provided for, and shall be accompanied by cash or checks collectible in Austin to cover said amounts.

SEC. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction to be held at a time and place designated by the Board and after adequate and proper notice, but no disposition shall be made of said oil and gas in said lands at such public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

SEC. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall make an award to the applicant, offering the

highest price therefor, and a lease shall be executed by the Commissioner of the General Land Office, a duplicate copy of such lease shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of three years oil and gas in paying quantities shall not have been produced, the lease shall terminate. The lease shall include such additional provisions and regulations as the Board may prescribe to preserve the interest of the State and safeguard the interests of the University funds, but not inconsistent with the provisions of this Act.

SEC. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event ofthe discovery of oil or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

SEC. 10. Title to all rights purchased may be held by

the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties, in which the area may be situated and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe lines, telephone lines and the opening of such roads over the University lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

SEC. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the University Permanent Fund on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily guages of tanks,

gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, receipt and discharges of all wells, tanks, pools, meters, pipe lines and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or any member of the Board of Regents of the University of Texas, or the representative of either.

SEC. 12. In every case where the area in which the oil and gas sold shall be contiguous or adjacent to land not University land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and gas is sold is contiguous to other University lands leased or sold, at a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

SEC. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail

or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so determines, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone lines and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

SEC. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner

of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the Permanent University Fund and all rentals for delay in drilling and all other payments, including all filing assignments and reliquishment fees hereunder to the credit of the Available University Fund.

SEC. 15. The Board is authorized to employ a geologist and a mineralogist who shall keep informed with reference to the minerals in University lands and all activities under this and previous leases and sales and shall report to the Board all information gained with reference thereto. The Board is also authorized to employ other necessary employees. The salaries of such employees shall be paid monthly, and no salary shall be paid in excess of six thousand ($6,000) dollars per annum.

SEC. 16. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of twenty thousand ($20,000) dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1929.

SEC. 17. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

SEC. 18. The Board shall adopt proper forms and regulations rules and contract as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids, and shall have

the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

SEC. 19. Since there is no law authorizing the sale of oil and gas leases on University lands this fact creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three separate days in each House be suspended and that this be placed upon third reading and final passage and take effect from and after passage, and it is so enacted.

(NOTE—S. B. No. 82 passed the Senate, 25 ayes, 0 nays; Senate adopted free conference report, 28 ayes, 0 nays; passed House with amendments, 104 ayes, 23 nays; House adopted free conference report, 103 ayes, 5 nays.)

Approved March 29, 1929.

Effective March 29, 1929.

# APPENDIX H

## House Bill No. 812 of 1913.

### A Bill
### To Be Entitled

*An Act to Amend Article 7504, Revised Civil Statutes of 1911, by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land, authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency.*

*Be It Enacted by the Legislature of the State of Texas:*

SECTION 1. That Article 7504, Revised Civil Statutes of the State of Texas, be amended so as to hereafter read as follows:

ART. 7504. Real property for the purpose of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, and other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same, also all lease-hold interests whereby the lessee, grantee or licensee is authorized to mine and prospect for and take from lands, stone, granite, marble, fossils, minerals of any kind, including oil and gas.

SEC. 2. The fact that the right of the State to tax leasehold interests in lands under which the lessee, grantee or licensee is permitted to prospect for and mine or take from said lands minerals, including oil and gas, is being disputed by the owners of said lease-hold interests, and the State is being forced to have litigation with such persons, therefore the necessity to render the law of this State upon said subject beyond cavil or the possibility of

a doubt, creates an emergency and an imperative public necessity requiring that the constitutional rule requiring bills to be read on three several days in both Houses be suspended, and it is accordingly so done, and that this Act be in force and take effect from and after its passage, and it is so enacted.

**Floor Report.**

Committee Room, Austin, Texas.
March 19, 1913.

Hon. Chester H. Terrell, Speaker of the House of Representatives:

Sir: Your Committee on Revenue and Taxation, to whom was referred House Bill No. 812, a bill to be entitled

*An Act to Amend Article* 7504, *Revised Civil Statutes of* 1911, *by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land, authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency,*

Have had the same under consideration, and I am instructed to report it back to the House with the recommendation that it do pass.

MANGUM, *Chairman*,
KIRBY,
SPRADLEY,
BURGES,
(For the purpose of getting before the House only).
ROACH,
LANE,
DOVE,

KENNEDY,
PATTON,
DAVIS,
KING,
POWELL,
DIFFIE.

**House Bill 812.**

By KENNEDY.

**A Bill**
**To Be Entitled**

*An Act to Amend Article* 7504, *Revised Civil Statutes of* 1911, *by making clear the purpose and intent of the law to tax certain character of lease-hold interests in land authorizing the lessee, grantee or licensee to mine and to prospect for and take from lands stone, granite, fossils, minerals, including oil and gas; and declaring an emergency.*

March 8, 1913, Read first time and referred to Committee on Revenue and Taxation.

TERRELL.

Favorable Floor Report
3-19-13

ROACH.

THE STATE OF TEXAS
DEPARTMENT OF STATE

I, Jane Y. McCallum, Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true and correct copy of

HOUSE BILL No. 812

introduced at the 33rd Legislature; and the report attached thereto with the endorsement thereon, as now appears of record in this Department.

In Testimony Whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 10th day of April, A. D. 1930.

(SEAL) JANE Y. MCCALLUM,
*Secretary of State.*